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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 14, Original**

**FORREST HOLIDAY, PETITIONER,**

**vs.**

**JAMES A. JOHNSTON, WARDEN, UNITED STATES  
PENITENTIARY, ALCATRAZ, CALIFORNIA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED MARCH 2, 1941.**

**CERTIORARI GRANTED MARCH 2, 1941.**

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[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, SOUTH-  
ERN DIVISION**

No. 22940-L

FORREST HOLIDAY, Petitioner

vs.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz,  
California

AMENDED PETITION FOR A WRIT OF HABEAS CORPUS—Filed  
May 8, 1939

Upon leave of Court first obtained, the petitioner, Forrest Holiday files this his amended petition for a writ of habeas corpus, and respectfully represents and shows:

I

That your petitioner alleges that on or about the 27th day of May, 1936, in the Northeastern Division for the District of North Dakota, he was indicted under two counts charging violation of the laws of the United States; that, on or about the 13th day of October, 1936, in the United States District Court for the District of North Dakota, Northeastern Division, before the Honorable Andrew Miller, presiding therein, he was convicted under said indictment upon a plea of guilty to the offense as stated therein; that, thereupon, in pursuance of said conviction, he was sentenced to imprisonment for a period of ten (10) years on the first count of said indictment, charging a violation of Section 588 B (a) of Title 12 of U. S. C. A.; and sentenced to imprisonment for a period of fifteen (15) years on the second count of said said indictment, charging a violation of Section 588B (b) of Title 12 of U. S. C. A., said last mentioned sentence to commence at the expiration of the sentence on the first count; that he is now in prison in the United States Penitentiary at Alcatraz, California, in the custody of James A. Johnston, Warden of said Penitentiary, in execution of the said judgment of conviction and the sentences [fol. 2] thereunder; that the said judgment of conviction,

the sentences and imprisonment thereunder, are each and all contrary to the statutes and laws of the United States and the Constitution of the United States, in each of the following particulars, to-wit:

(a) That at no time in any of the above mentioned proceedings did your petitioner have the advice and assistance of counsel; that the trial court did not advise or inform him that he was entitled to counsel; that the petitioner did not know that he was entitled to or could have the advice or assistance of counsel in the absence of his ability to pay for the same; that because of the above premises the petitioner was not able to and did not make an intelligent or competent waiver of his constitutional right "to have the assistance of counsel for his defense."

(b) That your petitioner was indicted under two counts, and that he was convicted and sentenced for the violation of two offenses; that both counts were carried out of the same action and all under the same circumstances, and that the same evidence in this matter was necessary and was used in the trial and for the conviction on each of the two counts; that in law and in fact but one offense had been committed, with the result that your petitioner has been twice put in jeopardy for the same offense, contrary to the Constitution of the United States and the Amendments thereto.

That by reason of the premises aforesaid, your petitioner is unlawfully confined, imprisoned and restrained of his liberty.

## II

That your petitioner files herewith, as Exhibit "A", copies of the files and documents of the United States District Court for the District of North Dakota, Northeastern Division, in the proceedings taken and had before the said Court and out of which proceedings your petitioner was [fol. 3] convicted, sentenced and imprisoned as aforesaid; that your petitioner expressly refers to said records, files, and documents and makes the same a part of this amended petition as if set forth in full herein.

Wherefore, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, commanding him to bring the



said petitioner into and before United States District Court for the Northern District of California, Southern Division, that he may be released from further unlawful custody.

Stephen M. White, Attorney for Petitioner.

*Duly sworn to by Forrest Holiday. Jurat omitted in printing.*

[fol. 4] EXHIBIT "A" TO AMENDED PETITION

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF NORTH DAKOTA NORTHEASTERN DIVISION, DE-  
CEMBER TERM 1935

Indictment

Charge: Violation of Section 588 B of Title 12 U. S. C. A.

UNITED STATES OF AMERICA, Plaintiff,

vs.

JAMES RONALD WHITE, EARL PHIPPS and JAMES THOMAS,  
Defendants

The Grand Jurors of the United States of America, within and for the State and District of North Dakota, good and lawful men, duly selected, empaneled, charged and sworn, upon their oaths present:

That heretofore, to-wit: On or about the 27th day of May, 1936, at Maddock in the County of Benson, State and District of North Dakota, and within the jurisdiction of this Honorable Court, one Joseph Ronald White, one Earl Phipps and one James Thomas, whose true names other than as herein states are to the Grand Jurors unknown, and hereinafter in this indictment designated as the "defendants", did commit the offense of violating the provisions of Section 588 B of Title 12 United States Code Annotated, committed in the manner and form following, to-wit:

That at said time and place one C. I. Erstad, one Florence Hanson and one Fred Graber were officers and employees, to-wit: Cashier, Clerk and Assistant Cashier, respectively, of the Farmers State Bank of Maddock, North Dakota, which said bank was a banking corporation theretofore or-



ganized, and then and there existing, and in operation, and doing business, under and by virtue of the banking laws of the State of North Dakota, and at said time was an insured bank as defined in Sub-Section (C) of Section 12 B of the Federal Reserve Act; and each of said officers and said clerk of said Bank as such officers and such employee, had custody of the monies, funds and credits of said bank.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at said time and place the [fol. 5] said defendants did then and there by force and violence and by putting in fear, wilfully, knowingly, unlawfully and feloniously take from the presence of the said C. I. Erstad, the said Fred Graber, officers of said bank aforesaid, and the said Florence Hanson, Clerk of said bank as aforesaid, a large amount of money, then and there belonging to and being in the care, custody, control, management and possession of said Farmers State Bank of Maddock, to-wit: approximately \$4088.00, lawful and current money of the United States, in nickels, dimes, quarters, half dollars, dollar bills, new five dollar bills, new ten dollar bills and new twenty dollar bills, a more particular description of which is to the Grand Jurors unknown.

This contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

#### Count Two

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to-wit: on or about the 27th day of May, 1936, at the place mentioned in the first count of this indictment and within the jurisdiction of this Honorable Court, the said defendants did commit the offense of violating the provisions of Section 588 B of Title 12 United States Code Annotated, committed in the manner and form following, to-wit:

That at said time one C. I. Erstad, one Florence Hanson and one Fred Graber were officers and employees, to-wit: Cashier, Clerk and Assistant Cashier, respectively, of the Farmer State Bank of Maddock, North Dakota; which said bank was a banking corporation theretofore organized and then and there existing and in operation, and doing business under and by virtue of the banking laws of the State of North Dakota, and was at said time an insured bank as

defined in sub-Section (c) of Section 12 B of the Federal [fol. 6] Reserve Act; and each of said officers and said Clerk of said bank, as such officers and such employee had custody of the monies, funds and credits of said bank.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that at same time and place the said defendants did then and there, wilfully, knowingly, unlawfully and feloniously by the use of a dangerous weapon, to-wit: an automatic pistol, in committing the offense described in the first count of this indictment, the description of which said offense in said count is incorporated into this count by reference as fully as if set out herein in detail; put in jeopardy the lives of the said C. I. Erstad, Fred Graber and Florence Hanson, they being then and there officers and clerk, respectively, in said bank as aforesaid, while they were in charge of the monies, funds and credits of said bank.

This contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

P. W. Lanier, United States Attorney.

Endorsed on the back as follows: "United States District Court, District of N. Dak. N. E. Division. The United States of America vs. Joseph Ronald White, Earl Phipps and James Thomas. Indictment a true bill, (Signed) D. B. Sproul, Foreman.

No. 6414. Filed Sep. 24, 1936, J. A. Montgomery, Clerk.

[fol. 7]

#### COMMITMENT

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA  
FOR THE DISTRICT OF NORTH DAKOTA SOUTHEASTERN DIVISION

The President of the United States of America:

To the Marshal of the United States of the — District of North Dakota and to the Warden of the United States Penitentiary at McNeil Island, Washington, Greeting:

Whereas, at the December Term of said Court, 1935, held at Fargo in said district and division, to wit, on October 13, 1936, Forrest Hoiday (true name), alias James Thomas was sentence- by said Court upon his plea of guilty to the



indictment to be committed to the Custody of the Attorney General of the United States or his authorized representative, for imprisonment in a Penitentiary for and during the term and period of Ten (10) years upon the first Count of the Indictment and fifteen (15) years upon the second count of the Indictment—said sentences to run consecutively, beginning on the date on which he is received at the Penitentiary for service of said sentence; or if said prison- shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, said sentence shall begin on the date on which he is received at such jail or other place of detention for violation of

Section 588 B of Title 12 U. S. C. A., unlawfully by force and violence and by putting in fear, taking from the presence of the officers and clerk of the Farmers State Bank at Maddock, North Dakota, an insured Bank as defined in Subsection (c) of Section 12 B of the Federal Reserve Act, a large sum of money belonging to said bank as charged in the first count of the indictment, and unlawfully by the use of a dangerous weapon, to-wit: an automatic pistol, putting in jeopardy the lives of the said officers and clerk of said bank and taking from the presence of said officers and clerk a large sum of money belonging to said bank as charge- in the second Count of the Indictment.

And whereas, the Attorney General of the United States has designated the United States Penitentiary at McNeil Island, Washington as the place of confinement where the sentence of said Forrest Holiday (true name), alias James Thomas, shall be served;

Now, this is to command you, the said marshal, forthwith to take said Forrest Holiday (true name), alias James Thomas and him safely transport to said United States Penitentiary and Him there deliver to said Warden of said United States Penitentiary with a copy of this writ; and you, the said Warden, to receive said Forrest Holiday (true name), alias James Thomas and him keep and imprison in accordance with said sentence, or until he shall be otherwise discharged by due course of law.

Witness the Honorable Andrew Miller, Judge of said Court, and the seal thereof, affixed at Fargo in said district, this 13th day of October, 1936.

J. A. Montgomery, Clerk. E. R. Steele, Deputy Clerk. (Seal.)



[fol. 8]

## Return

I have executed the within writ in the manner following to-wit:

On October 13, 1936 I delivered said Forrest Holiday to the jailer of the Cass County Jail temporarily pending transfer to the institution herein designated for the service of sentence, and on 22nd — 1936, I delivered said Forrest Holiday, alias James Thomas to the Warden of the United States Penitentiary at McNeil, Washington, together with a copy of this commitment.

(Signed) S. J. Doyle, United States Marshal.

Filed November 2, 1936.

J. A. Montgomery, Clerk.

Marshal's Docket No. 14028

UNITED STATES OF AMERICA,

District of North Dakota, ss:

I, J. A. Montgomery, Clerk of the District Court of the United States for the District of North Dakota, do hereby certify that I have carefully compared the foregoing copies with the originals thereof which are in my possession as such Clerk and that such copies are a correct transcript from the original.

Indictment against Joseph Ronald White, Earl Phipps and James Thomas, filed in my office on September 24th, 1936, and Commitment on Sentence imposed on Forrest Holiday, alias James Thomas, with Marshal's return thereon.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, At Fargo, in said District, this 31st day of October A. D., 1938.

J. A. Montgomery, Clerk, by Joan Geston, Deputy.  
(Seal.)

[fol. 9] At a session of the District Court of the United States for the District of North Dakota, continued and held pursuant to adjourment, at the United States Court Room in the City of Fargo, in the 13th day of October, 1936, the Honorable Andrew Miller, Judge being present and presiding in said Court, the following among other proceedings were had and done, to-wit:

(6414)

UNITED STATES OF AMERICA, Plaintiff,

vs.

FORREST HOLIDAY (indicted under the name of James Thomas), Defendant.

## ARRAIGNMENT, PLEA AND SENTENCE

Now comes the United States, by P. W. Lanier, United States Attorney, and the defendant, in the custody of the Marshal, and said defendant being duly arraigned upon the Indictment filed against him, answers that his true name is Forrest Holiday, whereupon it is ordered that all further proceedings be conducted under the defendants's true name as given, and now the defendant being called upon to plead to the indictment, charging him with unlawfully and feloniously robbing a bank insured under the Federal Reserve Act, and putting in jeopardy the lives of its employees, in violation of Section 588 B of Title 12 USCA, pleads that he is guilty of the offense as charged in the indictment.

Now the United States Attorney moves the Court for sentence upon the plea of guilty aforesaid under the first count of the indictment herein, and said defendant being called upon to show cause, if any he have, why sentence should not now be pronounced against him, and no cause being shown, and the premises being considered and fully understood by the Court, it is

Ordered, Adjudged, Decreed and Sentenced, that said defendant, Forrest Holiday, be imprisoned in a United States Penitentiary for and during a term of Ten Years, commencing at twelve o'clock noon of this day, at Fargo, North Dakota, and committed to the custody of the Attorney General of the United States, or his authorized representative, to carry this sentence into execution.

Now the United States Attorney moves the Court for sentence upon the second count of the indictment, under the plea of guilty aforesaid, and the defendant being called upon to show cause, if any he have, why sentence should not now be pronounced against him, and no cause being shown, and the premises being considered and fully understood by the Court, it is

Ordered, Adjudged, Decreed and Sentenced, that said defendant Forrest Holiday, be imprisoned in a United



States Penitentiary for and during a term of fifteen years, commencing at the expiration of the sentence imposes under count one of the Indictment, and committed to the custody of the Attorney General of the United States, or his authorized representative, to carry this sentence into execution.

THE UNITED STATES OF AMERICA,  
District of North Dakota, ss:

I, J. A. Montgomery, Clerk of the District Court of the United States for the District of North Dakota, do hereby certify that the above and foregoing is a true copy of arraignment, plea and sentence entered upon the Journal of the proceedings of said Court, in the cause therein entitled; [fol. 10] that I have compared the same with the original entry of said arraignment, plea and sentence, and it is a true transcript therefrom, and the whole thereof.

Witness my Official Signature and the Seal of said Court at Fargo, in said District, this 31st day of October, 1938.

J. A. Montgomery, Clerk, by Joan Geston, Deputy.

[fol. 11] Good cause appearing therefore, leave is hereby granted to Forrest Holiday to file the attached amended petition for a writ of habeas corpus.

Dated this 6th day of May, 1939.

Harold Louderback, U. S. District Judge.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

[Title omitted]

ORDER TO SHOW CAUSE—Filed June 29, 1939

To James A. Johnson, Warden, United States Penitentiary, Alcatraz, California, respondent herein:

It appearing that Forrest Holiday on May 6, 1939, filed in the above entitled Court his verified amended petition for a writ of habeas corpus;

Now, upon motion of Stephen M. White, Attorney for the said Forrest Holiday, the petitioner herein, and good cause appearing therefor,



You are hereby directed to appear before this Court on the 10th day of July, 1939, at the hour of 10 o'clock A. M. of said day, to show cause, if any you have, why a writ of habeas corpus should not be issued as prayed for in the petition for a writ of habeas corpus on file herein, and

It is hereby ordered that you, or whoever is acting under your orders or the orders of the Attorney General of the United States, retain the custody of the said Forrest Holiday within the jurisdiction of this Court until its further order herein, and

It is further ordered hereby that a copy of this order be [fol. 13] served upon you and upon the United States Attorney for this District, your representative herein.

Dated at San Francisco, California, this 29th day of June, 1939.

(Signed) Harold Louderback, United States District Judge.

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO ORDER TO SHOW CAUSE—Filed July 10, 1939

Now comes James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, California, and for cause why a writ of habeas corpus should not issue herein shows as follows:

I

That the person hereinafter called "the prisoner", on whose behalf the petition for writ of habeas corpus was filed, is detained by your respondent James A. Johnston as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of the Judgment and Sentence, and Order and Warrant of Commitment duly and regularly issued in Criminal Cause Number 6414 on the 13th day of October, 1936, by the United States District Court for the District of North Dakota, and transfer order [fol. 15] issued at Washington, D. C. by the Bureau of

Prisons of the Department of Justice, in the case of said Forrest Holiday;

## II

That filed herewith and incorporated herein as though fully set forth and as Respondent's Exhibit "A" are the following:

- (1) Certified copies of the indictment, judgment and sentence and commitment in said criminal cause No. 6414;
- (2) Certified copy of the docket entries in said criminal cause No. 6414;
- (3) Copy of the transfer order issued as aforesaid;
- (4) Record of Court Commitment of the United States Penitentiary at Alcatraz, California, pertaining to Forrest Holiday;
- (5) Certificate of Honorable Andrew Miller, Judge of the District Court of the United States for the Northern District of California;
- (6) Affidavit of Deputy United States Marshal Angus Kennedy;

Wherefore, respondent prays that the petition for writ of habeas corpus be dismissed.

Dated: This 30th day of June, 1939.

James A. Johnston, Warden, United States Penitentiary at Alcatraz Island, California.

[fols. 16-18] EXHIBIT "A" TO RETURN

Indictment omitted. Printed side page 4 ante

[fols. 19-21] Commitment omitted. Printed side page 7 ante

[fol. 22] Arraignment, plea and sentence omitted. Printed side page 9 ante.

[fol. 23] DISTRICT COURT OF THE UNITED STATES, DISTRICT OF NORTH DAKOTA

## DOCKET ENTRIES

I, Beatrice A. McMichael, Clerk of the United States District Court for the District of North Dakota, do hereby



certify that the following is a correct copy of the docket entries in my office, found in Criminal Docket, Volume "M", No. 6414, in the case of United States of America vs. James Thomas:

Sept. 24, 1936—Entered report of Grand Jury.

" " " —Filed indictment.

" " " —Entered order for bench warrant and issued bench warrant.

" " " —Entered bond order and certified copy thereof.

" " " —Filed certificate of Foreman of Grand Jury.

" " " —Filed warrant returned not found.

" " " —Entered order for certified copy of indictment for use in apprehending the defendant in the Western District of Missouri.

" " " —Certified copy of indictment, bench warrant and Non Est Return given U. S. Attorney.

Oct. 10, 1936—Filed U. S. Commissioner's Transcript.

" " " —Filed Warrant on Removal.

" " " —Issued bench warrant.

" 13 " —Filed warrant returned.

" " " —Entered arraignment, plea of guilty, and sentence. Defendant pleads that his true name is Forest Holiday and records are changed to conform thereto. Sentence imposed of ten years on first count, and fifteen years on second count, to run consecutively.

" " " —Final commitment and certified copy.

Nov. 2 " —Filed commitment returned.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Fargo, in said District, this 22nd day of May, A. D. 1939.

Beatrice A. McMichael, Clerk. (Seal.)

[fol. 24]

TRANSFER ORDER

Department of Justice, Washington

August 30, 1937.

(Seal)

To the Warden, U. S. Penitentiary, McNeil Island, Washington.

Whereas, in accordance with the authority contained in title 18, sections 744b and 753f, U. S. Code, the Attorney



General by the Director of the Bureau of Prisons has ordered the transfer of Forrest Holiday, No. 12392, from the U. S. Penitentiary, McNeil Island, Wash., to the U. S. Penitentiary, Alcatraz Island, Calif.

Now therefore, you, the above-named officer, are hereby authorized and directed to execute this order by causing the removal of said prisoner, together with the original writ of commitment and other official papers as above ordered and to incur the necessary expense and include it in your regular accounts.

And you, the warden, superintendent, or official in charge of the institution in which the prisoner is now confined, are hereby authorized to deliver the prisoner in accordance with the above order; and you, the warden, superintendent, or official in charge of the institution to which the transfer has been ordered, are hereby authorized and directed to receive the said prisoner into your custody and him to safely keep until the expiration of his sentence or until he is otherwise discharged according to law.

By direction of the Attorney General, (S) Frank  
Loveland, Acting asst. Director, Bureau of Prisons,  
———, Safer custody.

A True Copy:

W. F. Dorington, Record Clerk, U. S. P., Alcatraz,  
Calif.

Original.—To be left at institution to which prisoner is transferred.

(Here follow 2 photolithographs, side folios 25-25½.)

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## RECORD OF COURT COMMITMENT

Department of Justice

## PENAL AND CORRECTIONAL INSTITUTIONS

RECEIVED AT ALCATRAZ,  
OCTOBER 3, 1937, BY  
TRANSFER FROM USP McNEIL  
ISLAND  
Inst. Name HOLIDAY, Forrest No. 438-12  
U. S. PENITENTIARY  
(Institution) ALCATRAZ, CALIFORNIA  
(Location)Alias JAMES THOMAS Color WHITE DATE OF BIRTH - 8-3-03  
True Name James Thomas Name and number of prior commitments to Fed. Inst. SAME, 19322, USP MANTIL ISLAND  
Offense ROBBERY OF NATIONAL BANKDistrict NO. DAKOTA - FARGO  
(ONE 10YR & ONE 15YR-Consecutively)Sentence 20 YEARS Costs: Fine X Committed Not Committed Paid  
Not Committed Not Committed Paid

Sentence changed New term Reason therefor

Sentenced OCTOBER 13, 1936 When arrested SEPTEMBER 19, 1936Committed to Fed. Inst. OCTOBER 23, 1936 Where arrested EXCELSSION SPRINGS, MO.Sentence begins OCTOBER 13, 1936 Residence EXCELSSION SPRINGS, MO.Eligible for parole FEBRUARY 12, 1945 Time in jail before trial SINCE ARRESTEligible for conditional release with good time JULY 26, 1963 Rate per mo. Total good good time 10 time possible 3000 DAYS

Eligible for con. rel. with extra good time

Forfeited good time

Amount forfeited

Restoration good time

Amount restored

Expires full term OCTOBER 12, 1961

Former Com. on Sentence to Other Institutions

Person to be notified in case of serious illness or death

No.	Name of Institution	Location	Name	Relation to prisoner	Address	Telephone
8776	STATE REFORMATORY	GREEN BAY, WIS.	MR. TED HOLIDAY	BROTHER	208 THOMPSON, AVE.	EXCELSSION SPRINGS, MISSO.

## ACTION OF BOARD

Releases and commitments on present sentence other than parole

Date	No. app.	Parole				War. is.	Rev.	Dis. from par.	Releases and commitments on present sentence other than parole	
		Forth.	Effect.	Rel.	Den.				Date	Method

## DETAINERS FILED

Date	Nature of Detainer	Notify Whom	Remarks
1/5/37	WANTED BY - US MARSHAL - TACOMA - WASHINGTON - PER - 12/31/36		

(RELEASED 3/29/37)

25

# AUTHORIZATION FOR DISPOSITION OF MAIL & PROPERTY

I hereby authorize the \_\_\_\_\_

(Warden or Superintendent)

\_\_\_\_\_ of the \_\_\_\_\_

(Institution)

\_\_\_\_\_ or his authorized representative, to open and examine all mail matter and express or other packages which may be directed to my address, and to sign my name as endorsement on all checks, money orders, or bank drafts, for deposit to my credit in the Prisoners' Trust Fund, as long as I am a prisoner in said institution.

In the event that I should die, I direct that my \_\_\_\_\_ be notified and that all of my personal effects, including any money remaining to my credit in or due me from said \_\_\_\_\_

\_\_\_\_\_, be immediately transmitted to \_\_\_\_\_ whose address is \_\_\_\_\_

(Institution)

Dated at the \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, this

\_\_\_\_\_  
(Name and Number)

I hereby certify that the above and foregoing was read and fully explained by me to the above-named prisoner before he signed the same, and that he signed the same voluntarily in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Record Clerk

FPI INC.-FLE-1.9-32-50000-15162-1



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[fol. 26] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

[Title omitted]

• CERTIFICATE OF HON. ANDREW MILLER

I, Andrew Miller, Judge of the District Court of the United States for the District of North Dakota do hereby certify that I have been the United States District Judge for the District of North Dakota for the last seventeen years; that it has always been my uniform practice to inquire of defendants appearing before me, without counsel, charged with the commission of felonies, whether or, not they desired counsel, and if so to offer to appoint counsel; that sentence in the case of United States v. Forrest Holiday was imposed more than two years ago, and for that reason I have no independent recollection of making this offer and inquiry in said case, but in view of my long established practice in such cases and the fact that I imposed a long prison sentence, I am positive to a moral certainty that I did so inquire of said Forrest Holiday whether or not he desired to be represented by counsel before I permitted the plea of guilty to be entered in said case.

Andrew Miller, U. S. District Judge.

Dated June 2, 1939.

[fol. 27] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

[Title omitted]

AFFIDAVIT OF ANGUS KENNEDY

Angus Kennedy, being first duly sworn, deposes and says: That he is a duly appointed, qualified and acting Deputy United States Marshal for the District of North Dakota, and as such Deputy aforesaid, he together with S. J. Doyle, the United States Marshal for the District of North Dakota on or about October 22, 1936 transported the petitioner herein, Forrest Holiday, from Fargo, North Dakota to McNeil Island, Washington under a commitment of the United States District Court for the District of North Dakota; that during the course of said trip said petitioner brought up the subject of the sentence imposed upon him by the Honorable

Andrew Miller, Judge of the United States District Court for the District of North Dakota for the offense to which he had pleaded guilty; that said petitioner made a statement to the effect that he had not been accorded fair treatment by the government agent who investigated his case and to whom he had admitted his guilt; he further stated that he had been promised by said government agent that in the event he pleaded guilty he would receive a sentence not to exceed twenty-five years, and that instead of receiving a straight twenty-five year sentence he had been sentenced to serve ten years on the first count of the indictment and fifteen years on the second count, to run consecutively, which meant that he would have to serve the full ten year sentence and the required portion of the fifteen year sentence before he would be eligible for parole; This affiant asked the petitioner why he had not gotten himself an attorney and stood trial, to which the petitioner replied he had no use for an attorney; that he would have been satisfied had he received the sentence promised him, and he further advised this affi- [fol. 28] ant that he had not stood trial because he feared certain things might develop that would not be for the best interests of said petitioner and made the statement: "I knew I would get the book thrown at me."

Angus G. Kennedy.

Subscribed and sworn to before me on this the 3d day of June, 1939. F. G. Talcott, Deputy Clerk, U. S. District Court.

[File endorsement omitted.]

[fol. 29] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF CALIFORNIA

[Title omitted]

TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE—Filed July  
31, 1939

Now, comes, Forrest Holiday, petitioner in the above entitled cause, through his attorney, Stephen M. White, Esq., and by traverse to the respondent's return to the order to show cause on file herein, admits, denies and alleges, as follows:

## I

Admits that he is detained by respondent, James A. Johnston, as Warden of the United States Penitentiary at Alcatraz Island, California, under and by virtue of a warrant and order of commitment issued in Criminal Cause Number 6414 on the 13th. day of October, 1936, by the United States [fol. 30] District Court for the District of North Dakota, and transfer order issued at Washington, D. C. by the Bureau of Prisons of the Department of Justice, in the case of said Forrest Holiday; denies that said warrant and order of commitment and said transfer order were regularly issued; denies that the judgment and sentence of said Court, by virtue of which said warrant and order of commitment and said transfer order were issued, were valid.

## II

Referring to the affidavit or certificate of Honorable Andrew Miller, Judge of the District Court for the District of North Dakota, denies that the said Andrew Miller inquired of said Forrest Holiday whether or not the latter desired to be represented by counsel at any or during any of the proceedings in said criminal cause.

## III

Referring to the affidavit of Deputy United States Marshal Angus Kennedy, denies the statements attributed to the said Forrest Holiday by the said Angus Kennedy, particularly, the statements that "This affiant asked the petitioner why he had not gotten himself an attorney and stood trial, to which the Petitioner replied he had no use for an attorney; that he would have been satisfied had he received the sentence promised him, and he further advised this affiant that he had not stood trial because he feared certain things might develop that would not be for the best interests of said petitioner and made the statement: 'I knew I would get the book thrown at me.' "

Wherefore, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, commanding him to bring the said petitioner into and before the United States District Court [fol. 31] for the Northern District of California, Southern



Division, that he may be released from further unlawful custody.

Stephen M. White, Attorney for Petitioner.

[File endorsement omitted.]

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[fol. 32] IN UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

WRIT OF HABEAS CORPUS—Filed December 14, 1939

United States of America to James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California.

Greetings:

We command you that you have the body of Forrest Holiday by you restrained of his liberty and detained in your custody, as is said, by whatever name the said Forrest Holiday may be called or known, together with the day and cause of his being taken and detained by you before the United States Commissioner for the Northern District of California, Southern Division, at the Administration Building of the United States Penitentiary at Alcatraz, California, on the 16th day of December, 1939, at 10 o'clock A. M. of said day; then and there to do, submit and receive whatsoever the United States Commissioner shall then and there consider in that behalf.

Witness, the Honorable Martin I. Welsh, Judge of the United States District Court for the Northern District of California at San Francisco, California, this 8th day of December, 1939.

Walter B. Maling, Clerk, by J. P. Welsh, Deputy Clerk.

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[fol. 33] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA  
Northern District of California, ss:

I hereby certify and return that I served the original of the annexed Writ of Habeas Corpus on the therein-named

James A. Johnston by handing to and leaving a true and correct original thereof with James A. Johnston personally at Alcatraz Is. California in said District on the 13th day of December, A. D. 1939.

George Vice, U. S. Marshal, by Herbert R. Cole,  
Deputy.

[File endorsement omitted.]

[fol. 34] (Certificate to depositions omitted in printing.)

[fol. 35] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

[Title omitted]

DEPOSITIONS OF P. W. LANIER AND A. G. KENNEDY

The Notice of taking Depositions dated January 24th, 1940, provided that the Depositions would be taken before Phil B. Vogel, Notary Public, 710 Black Building, Fargo, North Dakota. At 10:00 o'clock A. M. on February 13th, 1940, the hearing was adjourned from 710 Black Building to the Office of the United States Attorney, Third Floor, Federal Building, Fargo, North Dakota. Notice of adjournment and the place to which adjournment was had was left with the person in charge of Mr. Vogel's office at 710 Black Building, and which person was in the office of Mr. Vogel at the Black Building during the taking of the depositions.

The depositions of P. W. Lanier and A. G. Kennedy are taken pursuant to Notice of Taking Depositions, the original of which is attached hereto.

Mart R. Vogel appeared on behalf of the respondent, before Phil B. Vogel, Notary Public.

No appearance was made on behalf of the Petitioner

P. W. LANIER, being first duly sworn, testified as follows:

Q. Will you state your name?

A. P. W. Lanier.

Q. What is your residence, your address, Mr. Lanier?

A. Sunnyside Apartments, Fargo, North Dakota.

Q. What is your business?

A. Attorney.

Q. Are you employed by the government in any capacity?

A. I am.

Q. And what is that capacity?

A. United States Attorney for the District of North Dakota.

Q. How long have you been so employed?

A. Since July 27th, 1933.

[fol. 36] Q. Now, Mr. Lanier, the inquiry which is about to take place arises out of the case of the United States of America vs. Forrest Holiday and others, in the District Court of the United States for the District of North Dakota, Northeastern Division. On September 24, 1936, the Grand Jurors returned an indictment charging Forrest Holiday and others with the violation of Section 588 B of Title 12, United States Code Annotated. There were two counts, the first charging the Defendants with feloniously taking from the presence of the officers of the Farmers State Bank of Maddock, North Dakota, an insured bank under the provisions of Section 12B of the Federal Reserve Act, a large amount of money; the second count charging the Defendants with the use of a dangerous weapon in threatening the officers described in Count No. 1, thus putting in jeopardy the lives of the officers of the bank. Will you state whether or not you ever met or ever became acquainted, in any manner, in your official capacity, with the Defendant Forrest Holiday?

A. I did.

Q. When was that?

A. On the morning of October 13th, 1936.

Q. What was the occasion, Mr. Lanier, for your first meeting him?

A. He was brought into the Federal Court Room at Fargo, North Dakota, for arraignment under the charge that you have just called to my attention.

Q. You were handling the arraignment, were you?

A. I was.

Q. Before whom did you and the Defendant Forrest Holiday appear?

A. Before Judge Andrew Miller, the presiding judge for the District of North Dakota.

[fol. 37] Q. And this was, you state, on October 13th 1936?



A. It was.

Q. Mr. Lanier, will you state whether or not prior to the arraignment did you ever have any conversation with the Defendant Forrest Holiday that you recall of?

A. Prior to the time that I moved his arraignment in the Federal Court, as I have heretofore testified to, I have no recollection of having seen him.

Q. Do you have any independent recollection of the arraignment and the sentencing of Forrest Holiday?

A. I have no independent recollection of what I said to the Defendant nor what the Judge said to the Defendant.

Q. Well, now, how long have you been acting as United States Attorney for the District of North Dakota?

A. Continuously since the 27th of July, 1933.

Q. During that period you have handled, I suppose, hundreds of criminal cases?

A. Yes.

Q. And you, yourself, handle the arraignment proceedings before Judge Miller?

A. Yes.

Q. You have stated, Mr. Lanier, that you handled the arraignment of Forrest Holiday. On the occasion of your arraigning defendants in criminal matters, will you state just what the custom or procedure is which you follow?

A. The invariable rule is, and has been since I have been in this office, that when a defendant appeared for arraignment and who had no attorney, he would be advised by me or one of my assistants handling the arraignment, of the charge against him. He would then be advised by the Court of his constitutional rights. The Court would advise him of his right to have an attorney, and if he had none, would ask him if he wanted an attorney. If he wanted an [fol. 38] attorney, he would be asked if he had money with which to pay him, and if he said he did not have, the Court would advise that an attorney would be appointed for him, and this would be done.

Q. Mr. Lanier, when you speak of the Court, whom specifically do you mean?

A. I mean Judge Andrew Miller. During all of this time he has been the presiding judge.

Q. Mr. Lanier, do you know has Judge Miller ever failed to advise the defendant in a case such as the one in question of his constitutional rights, and in the event the defendant has no lawyer, whether or not he desires counsel?

A. To my knowledge he has never failed to do this.

Q. From your knowledge of the custom and practice of the Federal District Court for the District of North Dakota and of the custom and practice of the Judge, are you in a position to state whether or not in your opinion the charges against Forrest Holiday were read to him and whether or not in your opinion the Court would advise him of his constitutional rights?

A. I am certain that he was advised of the charge against him because I handled the arraignment, and I have never failed to advise a defendant in a felony case of the charge against him when he made an appearance without an attorney. Speaking from my experience before Judge Miller and from my familiarity with the custom that prevails, I am sure to a moral certainty that Judge Miller followed the custom that prevails on this case.

Powless W. Lanier.

A. G. KENNEDY, being first duly sworn, testified as follows:

Q. Will you state your name, please?

A. A. G. Kennedy.

Q. Where do you live, Mr. Kennedy?

[fol. 39] A. Fargo.

Q. What is your business?

A. Deputy United States Marshal.

Q. For the District of North Dakota?

A. Yes.

Q. Mr. Kennedy, the present inquiry has reference to the case of the United States of America vs. Forrest Holiday and others, in the District Court of the United States for the District of North Dakota, Northeastern Division. An indictment by the Grand Jurors was returned on September 24th, 1936, in which Forrest Holiday and others were charged with having violated the provisions of Section 588B of Title 12, United States Code Annotated. Mr. Kennedy, how long have you acted as Deputy United States Marshal?

A. Since September 1st, 1933.

Q. Continuously over that period?

A. Yes, sir.

Q. Well, now, as such Deputy United States Marshal, did you ever have occasion to meet with Forrest Holiday, whom I spoke of just a minute ago?

A. I had.

Q. Do you remember when that was?

A. Well, it would be the day he was sentenced, would be the first day. I remember I transported him from the jail over to the Federal Building.

Q. The records indicate that the day of the sentencing was October 13th, 1936. Is that about correct?

A. That is about correct, I would say.

Q. What was the occasion for your first meeting Mr. Holiday?

A. I fetched him from the county jail to the Court Room here for sentencing.

A. After the sentencing what happened then, if anything? [fol. 40] A. Well, as near as I remember, we took him back to the jail.

Q. By we, you mean who?

A. Well, Bill O'Leary, another Deputy.

Q. Took him back to the jail here in Fargo?

A. Yes. I recall the statement he made coming out of the Court Room, "Take me out and shoot me."

Q. Well, now, after taking him to the county jail here at Fargo, what did you do with him subsequently, if anything?

A. Later, on the 21st of October, Mr. Doyle, the Marshal, and myself transported him to McNeil Island.

Q. Where is McNeil Island?

A. That is out of Seattle.

Q. What was the reason for your taking him out there?

A. That is where he was supposed to serve his sentence,

Q. That is, Seattle, Washington?

A. Seattle, Washington.

Q. What was your mode of transportation?

A. Transported him by airplane.

Q. From Fargo to Seattle?

A. From Fargo to Seattle, yes.

Q. Who accompanied you, did you say?

A. Mr. Doyle.

Q. During the course of your travel with Mr. Holiday and Mr. Doyle did you have any conversation with Holiday?

A. Yes, we had.

Q. That was on October 21st, 1936, or a day or so thereafter?

A. Yes. It was on October 21st.

Q. Where did the conversation take place?

A. Well, in riding out from the jail to the airport.



Q. Was anyone else present that you know of besides Mr. Doyle and Mr. Holiday.

[fol. 41] A. Well, I believe that—I would say that Howard Strack took us out. I think he took us out.

Q. Did you have any conversation with Holiday with respect to the sentence imposed on him by Judge Miller?

A. Well, he was terribly sore at the Judge. He claimed that he had made a deal with the F. B. I. men that he would plead guilty and take a twenty-five year sentence, but that he did not figure that he was going to get two sentences, ten and fifteen years. He kept talking about that all the time, telling about what a raw deal he got. I asked him, "Why didn't you get an attorney and fight the case?" His statement was something to the effect that he couldn't afford to go to Court, that if he did they would hang him. There was more or less conversation all the way down.

Q. Mr. Kennedy, you stated that there was some conversation between you and Holiday with reference to an attorney, that you asked Holiday why he did not get an attorney. During the course of your trip did Holiday at any time indicate that he desired an attorney?

A. No.

Q. Did he at any time indicate that he did not know what the charge was against him?

A. No.

A. G. Kennedy.

[fol. 42] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

NOTICE OF TAKING DEPOSITIONS—Filed Feb. 20, 1940

Stephen M. White, Esq., Attorney for Petitioner:

You will please take notice that on Tuesday, February 13, 1940, at 10:00 o'clock A. M. the deposition of P. W. Lanier, United States Attorney for the District of North Dakota, will be taken on behalf of the respondent herein, before Philip B. Vogel, Notary Public, 710 Black Building, Fargo, North Dakota.

Upon completion of the above deposition, respondent will, before the said Notary Public at the said office in Fargo, North Dakota, take the deposition of Angus Kennedy, Deputy United States Marshal for the District of North Dakota.

The said witnesses reside in North Dakota and at a distance of more than one hundred miles from the place where the trial and hearing on the above entitled matter will occur. The examination of said witnesses will proceed from day to day until completed. The said Notary Public before whom these depositions will be taken is not of counsel for either of the parties to, nor is he interested in this cause. You are notified to attend these depositions and cross-examine.

Dated at San Francisco, California, this 24th day of January, 1940.

Frank J. Hennessy, United States Attorney. A. J.  
Zirpoli, Assistant United States Attorney.

[fol. 43] Affidavit of Mailing

UNITED STATES OF AMERICA,

State and Northern District of California, City and  
County of San Francisco, ss:

A. J. Zirpoli, being first duly sworn, deposes and says: That he is a citizen of the United States over the age of twenty-one years; that he is an attorney-at-law and an Assistant United States Attorney for the Northern District of California, and that he resides in the City and County of San Francisco, State of California; that Stephen M. White, Esq., Attorney for the above-named petitioner, has his law offices at 550 Montgomery Street, San Francisco, California; that in San Francisco, California there is a United States Post Office with regular daily mail service to all parts of said City, including the office of Stephen M. White, Esq., at 550 Montgomery Street; that on the 24th day of January, 1940, affiant served a true copy of the above Notice of Taking of Deposition on said Stephen M. White, Esq., by depositing a copy thereof on the said date, in the Post Office at San Francisco, California, properly enclosed in a sealed envelope, addressed to Stephen M. White, Esq., Attorney at Law, 550 Montgomery Street, San Fran-

cisco, California and prepaid the postage due for the mailing of said envelope.

A. J. Zirpoli, Assistant United States Attorney.

Subscribed and sworn to before me this 24th day of January, 1940. Ernest E. Williams, U. S. Commissioner Northern District of California, at S. F. (Seal.)

[File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

REPORT OF UNITED STATES COMMISSIONER—Filed May 23, 1940

To the Honorable Court above named:

This is a proceeding in habeas corpus filed by Forrest Holiday, petitioner, to secure a discharge from confinement in the United States Penitentiary, Alcatraz, California.

For convenience Forrest Holiday, petitioner, will be designated as "petitioner"; and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, will be designated as "respondent".

This Court made the matter returnable before the undersigned on December 16, 1939 at the United States Penitentiary at Alcatraz, California.

[fol. 45] Accordingly, on December 16, 1939, your Commissioner conducted a hearing at the United States Penitentiary as aforesaid. Petitioner was present in person and was represented by Stephen M. White, Esq., Attorney at Law; respondent was represented by A. J. Zirpoli, Esq., Attorney at Law. Petitioner testified in his own behalf. The matter was continued until January 15, 1940, for the purpose of enabling respondent to obtain certain depositions. It was, for the same reason, continued until April 30, 1940.

#### Facts Pertaining to the Instant Matter

On September 24, 1936, petitioner, under the name of James Thomas, was indicted in two counts in the United States District Court of North Dakota, Northeastern Divi-



sion. Count One charged bank robbery; count two charged placing the lives of certain bank officials in jeopardy by the use of a dangerous weapon, to-wit: an automatic pistol. (Both counts charged a violation of Section 588B, Title 12 U. S. C. A.).

Petitioner was arrested in Excelsior Springs, Missouri, and thereafter consented to removal to Fargo, North Dakota. On October 13, 1936 he was taken before Honorable Andrew Miller, United States District Judge, and, after a reading of the indictment, pleaded guilty to both counts and was sentenced to imprisonment of ten years on the first count, and fifteen years on the second count, the said sentence on the second count to run consecutively.

Petitioner was committed to the United States Penitentiary, McNeil Island, Washington, and was thereafter transferred to the United States Penitentiary, Alcatraz, California.

#### [fol. 46]                      Testimony of Petitioner

Petitioner testified that he was 36 years old, almost 37, on the date of the hearing of December 19, 1939. He completed one year of high school.

#### Petitioner's Criminal Record

He claimed that his criminal record consisted of six or eight arrests. When he was sixteen years of age, he was arrested on a vagrancy charge and although he declared that he pleaded not guilty, he was sentenced to ten days or pay a fine of \$19.95.

In 1925 he was arrested in Fargo, North Dakota, in proceedings for extradition to Hudson, Wisconsin, for the offense of larceny. He employed an attorney to represent him in Fargo, North Dakota. He was extradited to Wisconsin. A sentence of from one to ten years was imposed by the Wisconsin State Court. In response to this sentence, he served three years in the reformatory and six months in the State Penitentiary. He enjoyed the assistance of employed counsel while he was before the Wisconsin Court.

#### Petitioner's Testimony Regarding the Instant Case

As previously stated, petitioner was arrested in Excelsior Springs, Missouri. He declared the arrest was effected by two agents of the Federal Bureau of Investigation of the Department of Justice. They haled him before

a United States Commissioner in Kansas City, Missouri, on removal proceedings to Fargo, North Dakota. He engaged counsel to defend him in said removal proceedings. He contended that he first resisted removal to North Dakota, [fol. 47] but was advised by his attorney that, inasmuch as he had been indicted, nothing could be done for him and he might as well return to North Dakota. Petitioner maintained that the two arresting Federal Bureau of Investigation agents induced him to plead guilty by recommending a severe sentence provided he refused to do so and a lighter sentence if he complied with their demands. His testimony was as follows:

"Two Department of Justice men appeared on several occasions, and at the final appearance of the two different Department of Justice men, they insisted that I waive extradition and make a statement to the effect that I was guilty. They told me that if I didn't, why, they would give me a large amount of years \* \* approximately 80 years \* \* and if I had any witnesses, why, they would see that they got ten years. If I could waive extradition, and sign a statement, they would recommend that I not get more than ten years." (Vide: Transcript, pages 3 and 4.)

Petitioner admitted that he signed a waiver of removal and a confession that he was implicated in the robbery. He testified that he was produced before Judge Miller and that after the first count was read to him that he entered a plea of guilty; that the second count was then read to him, he hesitated and was instructed by the Court that "anyone who was guilty of any part of it, was guilty of all." He, therefore, pleaded guilty to the second count.

He was not represented by counsel while he was in the United States District Court in Fargo, North Dakota. No one, including the Court, he declared, advised him of his constitutional right to such representation. He did not know that the Court would appoint counsel for him.

#### Evidence Presented by Respondent

Respondent's "Return to Order to Show Cause" includes copies, duly certified, of the following:

- [fol. 48] (1) The indictment;
- (2) Judgment and sentence;
- (3) Commitment, and

(4) Docket entries.

Said return also incorporates a certificate from the Honorable Andrew Miller, Judge of the United States District Court for the District of North Dakota. Judge Miller, who sentenced petitioner, averred that it was his uniform practice "to inquire of defendants appearing before me, without counsel, charged with the commission of felonies, whether or not they desired counsel, and if so to offer to appoint counsel; that sentence in case of United States v. Forrest Holiday was imposed more than two years ago, and for that reason I have no independent recollection of making this offer and inquiry in said case, but in view of my long established practice in such cases and the fact that I imposed a long prison sentence, I am positive to a moral certainty that I did so inquire of said Forrest Holiday whether or not he desired to be represented by counsel before I permitted the plea of guilty to be entered in said case."

In addition, respondent's said return embraces an affidavit of Angus Kennedy who, as Deputy United States Marshal for the District of North Dakota, aided in transporting petitioner to the United States Penitentiary, McNeil Island. Angus Kennedy stated that petitioner expected to get a sentence of twenty-five years in one sentence rather than one of ten years on the first count and fifteen on the second count, to run consecutively. Also, petitioner stated that, "he had no use for an attorney \* \* \* that he had not stood trial because he feared certain things might develop that would not be for the best interests of said petitioner [fol. 49] and made the statement, "I knew I would get the book thrown at me."

On the occasion of the hearing of April 30, 1940 petitioner was represented by his counsel Stephen M. White, Esq., respondent was represented by A. J. Zirpoli, Esq., Assistant United States Attorney for the Northern District of California. Respondent, on the latter date, produced an admission of implication in the bank robbery, which was duly signed by petitioner. (Vide: Respondent's Exhibit 2, April 30, 1940). Also, respondent introduced a waiver of removal executed by petitioner. (Vide: Respondent's Exhibit 1, April 30, 1940).

Respondent further presented the depositions of P. W. Lanier, United States Attorney for the District of North



Dakota, who prosecuted petitioner, and of A. G. Kennedy, Deputy United States Marshal; United States Attorney P. W. Lanier deposed that he had no independent recollection of the remarks the Court made at the time of sentencing petitioner but it was the invariable practice of the Court to advise defendants of their constitutional right to counsel, and to appoint counsel if a defendant so desired; that he was positive that Judge Miller followed his custom in the instant matter.

Deputy United States Marshal A. G. Kennedy stated that petitioner informed him that he "could not afford to go to Court, that if he did they would hang him."

#### Petitioner's Grounds for Discharge

In his Amended Petition for a writ of habeas corpus, petitioner presented two grounds therefor, to-wit: One, that he was deprived of his constitutional right in that he [fol. 50] did not have the assistance of counsel; that he did not know that he was entitled to such representation; and that he did not competently and intelligently waive such right. Two, that petitioner was sentenced for the violation of two offenses; that both counts involved the same evidence and constituted but one action and but one offense; that petitioner had been twice put in jeopardy for the same offense.

#### Findings of Fact

- (1) Petitioner's criminal experience enabled him to understand and appreciate his rights;
- (2) Petitioner voluntarily entered a plea of guilty after thoroughly understanding the charges involved;
- (3) It was the uniform practice of the Court in which sentence was imposed to inquire of those charged with felonies whether or not they wished counsel;
- (4) The Court in which sentence was imposed advised petitioner of his constitutional right to be represented by counsel;
- (5) Petitioner voluntarily signed an admission of guilt;
- (6) Petitioner competently and intelligently waived his right to the assistance of counsel.

### The Law

Habeas corpus cannot be employed to challenge the validity of consecutive sentences on two separate counts until the expiration of the lawful sentence imposed on the first count.

Vide: *McNally v. Hill*, 293 U. S. 131.

[fol. 51] Supporting affidavits are proper evidence in habeas corpus proceedings.

Vide: *Lewis v. Johnston* (9-CCA, No. 9351, May 16, 1940).

The accused may waive his constitutional right to counsel.

Vide: *Johnson v. Zerbst*, *ubi supra*;

*Buckner v. Hudspeth*, 105 F. (2d) 396;

*Warden v. Johnston*, 29 Fed. Supp. 207.

Whether there has been a competent, intelligent waiver of the right to counsel depends upon the particular facts and circumstances surrounding each case.

Vide: *Johnson v. Zerbst*, *ubi supra*;

*Cooke v. Swope*, 109 F. (2d) 955;

Also see 28 Supp. 492.

*Buckner v. Hudspeth*, *ubi supra*.

The background and experience of the accused may be considered in determining the question of a waiver of the right to counsel.

Vide: *Johnson v. Zerbst*, *ubi supra*;

*Buckner v. Hudspeth*, *ubi supra*.

The onus probandi is imposed upon the petitioner to establish that he did not competently and intelligently waive his right to the protection of counsel.

Vide: *Johnson v. Zerbst*, *ubi supra*;

*Buckner v. Hudspeth*, *ubi supra*;

*Nivens v. Hudspeth*, 105 F. (2d) 756;

*Warden v. Johnston*, *ubi supra*.

[fol. 52] Application of the Law to the Instant Facts

Petitioner's attack upon the validity of the sentence is, prior to serving the sentence on the first count, premature under *McNally v. Hill*, *ubi supra*.

The experience petitioner achieved in criminal proceedings, his voluntary pleas of guilty to both counts; the uni-

form practice of the Court to advise those accused of felonies of their constitutional right to be represented by counsel—a practice which your Commissioner finds was followed in the instant matter, lead to the conclusion that petitioner competently and intelligently waived his right to the benefit of counsel.

### Recommendation

Predicated upon the facts and the law your Commissioner is compelled to recommend that petitioner's application be denied.

Dated, May 23rd, 1940.

Respectfully submitted, Ernest E. Williams, United States Commissioner.

[File endorsement omitted.]

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[fol. 53] RESPONDENT'S EX. (1) APRIL 30, 1940—ERNEST E. WILLIAMS

After Tuesday Oct. 6th, 1936, I will agree to wa-ve all rights & return from this U. S. District to any U. S. district.

Oct. 4th, 1936.

I, Forrest Holiday, having been first fully informed by V. R. Clary & D. A. Bryce, Special Agent of the Federal Bureau of Investigation of the Department of Justice, that I have the right not to be removed from the Judicial District in which I was taken into custody without being first arraigned before a duly authorized judicial officer or magistrate and except by virtue of a warrant of removal issued for that purpose, do hereby waive my right to be arraigned before a duly authorized judicial officer or magistrate and my right not to be removed from the said judicial district except by virtue of a warrant of removal issued by that purpose, and do hereby freely consent and agree that I may be forthwith removed by representatives of the Department of Justice in their discretion to any judicial district of the United States, either for the purpose of questioning or for the purpose of being held to answer any criminal charge.



I am executing this waiver and consent of my own free will, and without any pressure, compulsion or coercion of any kind whatsoever.

The foregoing document was read to me before I signed it, and I fully understand its meaning and purport.

Forrest Holiday.

Witnesses: D. A. Bryce, Special Agent, Federal Bureau of Inv., U. S. Dept. of Justice, 610 Alonzo Ward Hotel Bldg., Aberdeen, S. D. V. R. Clary, Special Agent, Federal Bureau of Investigation, U. S. Dept. of Justice, 1616 Federal Reserve Bank Bldg., K. C., Mo.

[fols. 54-55] RESPONDENT'S EX. (2) APRIL 30, 1940—  
ERNEST E. WILLIAMS

I, Forrest Holiday, on the Fourth day of October, 1936, make the following Statement to V. R. Clary and D. A. Bryce, who I know to be Special Agents of the Federal Bureau of Investigation, U. S. Dept. of Justice. I make this statement of my own free will with no threats or promises being made me.

I was implicated in the robbery of the Maddock Farmers State Bank May 26th, 1936.

Signed X Forrest Holiday.

Witness: D. A. Bryce, Special Agent, Federal Bureau of Investigation, U. S. Dept. of Justice, 610 Alonzo Ward Hotel, Aberdeen, S. D. V. R. Clary, Special Agent, Federal Bureau of Investigation, U. S. Dept. of Justice, 1616 Federal Reserve Bank Bldg., Kansas City, Mo.

[fol. 56] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF CALIFORNIA

[Title omitted]

Before: Hon. Ernest E. Williams, U. S. Commissioner.

Tuesday, April 30, 1940, 11:45 o'clock A. M.

Counsel Appearing:

For the Petitioner: Stephen M. White, Esq.

For the Respondent: A. J. Zirpoli, Esq., Ass't U. S. Att'y.

The Commissioner: This is a continuance from the last hearing. Mr. Stephen M. White represents the petitioner. You have these depositions. Do you wish to offer them?

Mr. Zirpoli: Yes.

The Commissioner: The deposition of P. W. Lanier and A. G. Kennedy will be received in evidence at this time.

Mr. White: Well, I was going to object.

The Commissioner: Do you want to make your objection?

Mr. White: To about three-fourths of the questions and answers. Do I have to point them all out?

The Commissioner: Yes, you have to be specific. Do you want the deposition read now?

Mr. White: Well, I don't think it will be necessary to [fol. 57] read it.

Mr. Zirpoli: They may be deemed as having been read, subject to objections you are about to make.

Mr. White:

The Commissioner: That will be satisfactory.

Mr. White: Referring to page 4 of Lanier's deposition there appears the following question:.

"Q. Well, now, how long have you been acting as United States Attorney for the District of North Dakota?

A. Continuously since the 27th of July, 1933.

"Q. During that period you have handled, I suppose, hundreds of criminal cases."

I object to that question on the ground it is incompetent, irrelevant, and immaterial, and ask that the answer "Yes" be stricken.

Mr. Zirpoli: I will merely make the observation that that is a preliminary question.

The Commissioner: Objection overruled and motion denied.

Mr. White: On the same page there appears the following question:

"Q. You have stated, Mr. Lanier, that you handled the arraignment of Forrest Holiday. On the occasion of your arraigning defendants in criminal matters, will you just state what the custom or procedure is which you follow?"

I object to that question upon the ground it is incompetent, irrelevant, and immaterial, as to what the custom or procedure of Mr. Lanier is in handling criminal cases.

The Commissioner: Objection overruled.

Mr. White: And ask that the answer "The invariable rule is, and has been since I have been in this office, that when a defendant appeared for arraignment and who had no attorney, he would be advised by me or one of my assistants [fol. 58] handling the arraignment, of the charge against him. He would then be advised by the Court of his constitutional rights. The Court would advise him of his right to have an attorney, and if he had none, would ask him if he wanted an attorney. If he wanted an attorney, he would be asked if he had money with which to pay him, and if he said he did not have, the Court would advise that an attorney would be appointed for him, and this would be done."

I move that the answer be stricken out upon the same ground, that it is incompetent, irrelevant, and immaterial.

The Commissioner: Motion denied.

Mr. White: Referring to page 5 of the deposition of Mr. Lanier, I object to each and every question appearing on that page.

The Commissioner: May I see it?

Mr. White: Yes.

The Commissioner: What is the ground of the objection?

Mr. White: This question is incompetent, irrelevant, and immaterial in that the question merely goes to custom and practice.

The Commissioner: Objection overruled.

Mr. White: I also move that each and every answer given to each and every question appearing on pages 5 and 6 be stricken.

The Commissioner: Motion denied.

Mr. White: Very well.

Mr. Zirpoli: I also move to introduce in evidence at this time—

The Commissioner: The depositions may be introduced, as previously indicated.

Mr. Zirpoli: And deemed read into evidence?

[fol. 59] The Commissioner: And deemed read into evidence.

Mr. White: And it may be noted that I have taken an exception to each of the Court's rulings?

The Commissioner: It may be so noted.



Mr. Zirpoli: At this time I want to introduce in evidence the waiver and consent to removal on the part of Forrest Holiday signed on October 4, 1936.

Mr. White: I object to the introduction in evidence of the document purporting to be a waiver on the ground it is immaterial.

Mr. Zirpoli: You do not question his signature?

Mr. White: No.

The Commissioner: Objection overruled and it may be introduced as Respondent's Exhibit No. 1, April 30, 1940, in evidence.

(The document was marked "Respondent's Exhibit No. 1, April 30, 1940.")

Mr. White: Exception noted.

Mr. Zirpoli: I also wish to introduce in evidence a statement made by Forrest Holiday on October 4, 1936, which bears his signature, and the concluding paragraph of which says, "I was implicated in the robbery of the Maddock Farmers' State Bank May 26, 1936."

Mr. White: I object to the introduction in evidence of the purported statement of Holiday on the ground it is incompetent, irrelevant, and immaterial.

The Commissioner: Objection overruled.

Mr. White: Exception.

The Commissioner: It may be introduced as Respondent's Exhibit No. 2 of this date.

(The document was marked "Respondent's Exhibit No. [fol. 60] 2, April 30, 1940.")

(Endorsed.) Filed May 23, 1940, Walter B. Maling, Clerk.

[fol. 61] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 22940-W

FORREST HOLIDAY, Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California, Respondent.

Hearing on return to Writ of Habeas Corpus before Ernest E. Williams, United States Commissioner, Northern

District of California, on Tuesday, the 19th day of December, 1939, at the hour of 11:00 o'clock A. M. thereof, at the United States Penitentiary, Alcatraz, California.

STEPHEN M. WHITE, Esq., appeared on behalf of Petitioner.

A. J. ZIRPOLI, Esq., appeared on behalf of Respondent.

FORREST HOLIDAY produced as a witness in his own behalf, having been first duly sworn, testified as follows:

Mr. Williams: This is a petition for application of a Writ of Habeas Corpus on your part, and the United States District Court referred it to me to take testimony, and that is why we are here today.

Mr. Holiday: I understand.

Mr. Williams: All right. You may proceed.

Examination by Mr. White.

Mr. White:

Q. Your name is Forrest Holiday, is that correct?

A. Yes, sir.

Q. And you petitioned the United State District Court at San Francisco for a writ of Habeas Corpus?

A. Yes, sir.

Q. You are in the custody of James A. Johnston, as Warden, United States Penitentiary at Alcatraz, California?

A. Yes, sir.

Q. And you are in his custody by virtue of a sentence imposed by the United States District Court at Fargo, North Dakota, on October 13, 1936, is that correct?

[fol. 62] A. Yes, sir.

Q. Where were you arrested, Mr. Holiday, on the charges out of which your present imprisonment arises?

A. In Excelsior Springs, Missouri.

Q. What was that date of your arrest, if you recall?

A. I have no exact remembrance; but it was approximately September 21, 1936.

Q. By whom were you arrested?

A. By two agents of the F. B. I.

Q. Do you recall their names?

A. I have never heard their names.

Q. Following your arrest by two agents of the Federal Bureau of Investigation at Excelsior Springs, Missouri, you were taken by these agents to Kansas City, Missouri, is that correct?

A. Yes, sir.

Q. Did you appear before the United States Commissioner at Kansas City on or about October 7, 1936, in removal proceedings?

A. About that date.

Mr. Williams: That is, about October 7?

Mr. White: Yes, 1936.

Q. Were you in jail in Kansas City?

A. Yes, sir.

Q. Immediately prior to your hearing before the United States Commissioner?

A. Yes, sir.

Q. For how long a period were you in prison at Kansas City?

A. Approximately two weeks.

Q. Did you resist the removal proceedings which were instituted against you in Kansas City, or did you consent to be removed?

A. I resisted them for a period of time; then I consented.

Q. In consenting to your removal from Kansas City to Fargo, North Dakota, were any representations made to you by any officer of the United States Government, respecting leniency which might be shown you in the event that you [fol. 63] pled guilty to the charges under which you stood indicted?

A. Yes, sir.

Q. What representations were made?

A. Two Department of Justice men appeared on several occasions; and at the final appearance of the two different Department of Justice men, they insisted that I waive extradition and make a statement to the effect that I was guilty. They told me that if I didn't, why, they would give me a large amount of years—approximately 80 years—and if I had any witnesses, why, they would see that they got ten years. If I would waive extradition, and sign a statement, they would recommend that I not get more than ten years.



Q. Do you recall the names of these Department of Justice agents who made these representations?

A. No, I don't; their names are attached to the waiver.

Q. That waiver was signed at Kansas City?

A. At Kansas City.

Q. Upon consenting to a waiver and agreeing to go to Fargo, North Dakota, to answer the indictment which had been filed against you at Fargo, North Dakota, who accompanied you from Kansas City to Fargo, North Dakota?

A. A United States Marshal, and a Deputy Marshal.

Q. Do you recall the date of your arrival at Fargo, North Dakota?

A. Only that we arrived there on Saturday morning.

Q. How many days after your arrival did you appear in court at Fargo, North Dakota?

A. The following week—about four days later.

Q. Were you in jail continuously from the time of your arrival at Fargo, North Dakota, until the time that you appeared in court?

A. Yes, sir.

Q. Were you visited by any friends during the time that you were in jail at Fargo, North Dakota?

A. No, sir.

Q. Were you visited by any attorney?

A. No, sir.

[fols. 64-65] Q. Did you consult any attorney while you were in prison at Fargo, North Dakota?

A. No, sir.

Q. When you appeared in court at Fargo, North Dakota, to answer the indictment which had been filed against you, did you have an attorney?

A. No, sir.

Q. Do you recall the name of the Judge who presided in the court at the time of your appearance in North Dakota?

A. Only after I saw my papers, I knew his name.

Q. His name was Judge Andrew Miller, is that correct?

A. Yes, sir.

Q. How many appearances in court did you make at Fargo, North Dakota?

A. Just one.

Q. And on the occasion of that one appearance, did you

plead guilty to the indictment which had been filed against you?

A. Yes, sir.

Q. Was the indictment read to you by the Clerk of the court when you appeared in court on that one occasion?

A. No, sir.

Q. Did Judge Miller inquire of you as to whether or not you desired to have counsel to represent you in the proceedings?

A. No, sir.

Q. Did Judge Miller, on the occasion of your appearance in court, advise you that you had the right to have counsel represent you?

A. No, sir.

Q. Do you recall the name of the United States Attorney who appeared for the Government in the proceedings at Fargo, North Dakota?

A. Only through reading my papers.

Q. What was his name?

A. Mr. Lanier.

Q. Did Mr. Lanier appear in court for Judge Miller at the time of your plea in the interests of the Federal Government?

A. Yes, sir.

Q. Did Mr. Lanier advise you that you had the right to have counsel?

A. No, sir.

Q. Did Mr. Lanier inquire of you as to whether or not [fol. 66] you desired to have counsel?

A. No, sir.

Q. And, as a matter of fact, you did not have counsel at any stage of the proceedings before the United States District Court at Fargo, North Dakota?

A. No, sir.

Q. Did you know that you had the right to have counsel at the time of your appearance in court at Fargo, North Dakota?

A. Not without money to pay him; I did not.

Q. Did you have any money or financial resources to engage counsel to represent you in the proceedings at Fargo, North Dakota?

A. Not enough to pay a lawyer's fee.

Q. What was the extent of your financial resources at the time of your appearance before the Court at Fargo, North Dakota?

A. Approximately \$20.00.

Q. Do you recall the extent of the sentence imposed on you by the United States District Court at Fargo, North Dakota?

A. Yes.

Q. What were your sentences?

A. I was sentenced to 10 years on count 1; 15 years on count 2; the second count to begin at the expiration of the first count.

Mr. Williams: That is, 25 years?

The Witness: 25 years.

Mr. White: Q. Following the proceedings of the United States District Court at Fargo, North Dakota, you were taken to McNeil Island to serve out the terms of the imprisonment, is that correct?

A. Yes, sir.

Q. Were you taken to McNeil Island, from Fargo, North Dakota by one, Angus Kennedy, a Deputy United States Marshal?

A. Yes, sir.

Q. What was the mode of conveyance from Fargo, North Dakota, to McNeil Island?

A. We rode in an airplane from Fargo to Seattle.

Q. And at Seattle, did Mr. Kennedy deliver you into the [fol. 57] custody of another Government agent?

A. No, sir; I was put in the county jail over night.

Q. Who took you from the county jail to Seattle to McNeil Island?

A. A police van—or a prison van—I don't know which it was—with a number of other prisoners.

Q. Was Mr. Kennedy, the gentleman who took you from Fargo to Seattle, in that van with you?

A. Yes, sir; Mr. Kennedy was.

Q. On your trip from Fargo, North Dakota, to Seattle, on which trip you were traveling by airplane, did you have any conversation with Mr. Kennedy in respect to your failure to have an attorney represent you at the proceedings before the United States District Court at Fargo, North Dakota?

A. No, sir.



Q. Did Mr. Kennedy ask you why you had not gotten yourself an attorney and stood trial?

A. No, sir.

Q. Did you tell Mr. Kennedy that you had no use for an attorney?

A. No, sir.

Q. Now, at the proceedings before the United States District Court at Fargo, North Dakota, did any Government agent appear in court to give testimony?

A. There was one just before. I was sentenced.

Q. There was only one agent appearing in court, is that correct?

A. Yes, sir.

Q. Did that agent make any recommendation to the Court for leniency in your behalf?

A. No, sir.

Q. Did the United States Attorney who appeared in court in behalf of the Government make any representations to the Court for leniency in your behalf?

A. No, sir.

Q. What is the extent of your education, Mr. Holiday?

A. I have had approximately a year in high school.

Q. Are any members of your family attorneys?

A. No, sir.

[fol. 68] Q. Have you any friends that are attorneys?

A. No, sir.

Q. What is the extent of your experience in court, aside from the experience that you had at Fargo, North Dakota, on the charges out of which your present imprisonment arises?

A. I appeared in court in Wisconsin where I employed an attorney to represent me; that was in 1926.

Q. That was at what place in Wisconsin?

A. Hudson, Wisconsin.

Q. And you state you employed an attorney to represent you at that time?

A. Yes, sir.

Q. Did you have funds available, or financial resources with which to engage the attorney?

A. Yes, sir.

Q. Did you ever appear in court on any other occasion?

A. On another occasion in Fargo, North Dakota, on extradition; I employed an attorney there.

Q. When was that?

A. 1925; December, 1925.

Q. Did you have finances with which to engage an attorney on that occasion?

A. Yes, sir.

Q. Did you pay the attorney?

A. Yes, sir.

Q. Have you appeared in court on any other occasions with or without an attorney?

A. In Oklahoma, about 20 years ago.

Mr. Williams: Where?

The Witness: Oklahoma.

Mr. White: Q. Did you have finances sufficient to engage an attorney on that occasion?

A. No, sir.

Q. By whom was the attorney engaged that represented you?

A. I had no attorney.

Q. You didn't have an attorney on that occasion?

A. No, sir.

Q. Were you ever advised by any government, state, county or city official, or by any person whomsoever, prior [fol. 69] to the time that you were pled guilty at Fargo, North Dakota, on October 13, 1936, that you were entitled to have counsel to represent you in a criminal proceeding if you were without funds to provide for counsel?

A. No, sir.

Mr. White: That is all.

Examination by Mr. Zirpoli:

Q. You were arrested at Excelsior Springs, Missouri?

A. Yes, sir.

Q. You were arrested by two agents of the Federal Bureau of Investigation?

A. Yes, sir.

Q. And you do not now know their names?

A. I do not.

Q. You haven't the slightest idea what their names were?

A. No, sir.

Q. Did they take a statement from you at the time of your arrest?

A. No, sir.

Q. They questioned you?

A. Yes, sir.

Q. But they took no statement?

A. No, sir.

Q. They took an oral statement from you?

A. No, sir.

Q. Or a written statement?

A. No, sir.

Q. Then you were taken to Kansas City, and you appeared before a Commissioner?

A. Yes, sir.

Q. Do you remember the name of the Commissioner?

A. I believe his name was Mr. McDonald.

Q. How many times did you appear before the Commissioner?

A. Three different times.

Q. Did you have an attorney at any time there?

A. Yes, sir.

Q. You did have an attorney?

A. Yes, sir.

Q. What was his name?

A. Proctor.

Q. And his first name?

A. I do not know.

Q. You paid him?

A. Yes, sir.

Q. On how many occasions did he appear with you before [fol. 70] the Commissioner?

A. On two occasions.

Q. Did he advise you to consent to removal?

A. After he found out that I had been indicted, he advised me that he couldn't help me there, and withdrew from the case.

Q. Then you signed a waiver?

A. Yes, sir.

Q. Had you signed a waiver before this advice from your attorney?

A. No.

Q. Then you signed a waiver on advice of your attorney?

A. No, sir.

Q. He advised you before you signed it, nevertheless?

A. He advised me that I might as well go to North Dakota, because he couldn't do anything for me in Kansas City.

Q. Did he say the reason was because an indictment had been returned?

A. Yes.



Q. You signed this waiver before agents of the Federal Bureau of Investigation?

A. Yes.

Q. Were they the same agents that arrested you?

A. No, sir.

Q. They were entirely different men?

A. Yes, sir.

Q. Now, you signed that waiver on advice of the attorney — not because those agents had made representations to you, isn't that the fact?

A. No, sir.

Q. Do you know the names of those agents at all, before whom you signed the waiver?

A. I can't recall their names.

Q. Who made these representations, that you spoke of, to you?

A. These two agents.

Q. At Kansas City?

A. At Kansas City.

Q. The same agents who witnessed your waiver?

A. Yes, sir.

Q. They signed this waiver?

A. Yes, sir.

Q. What representations did they make to you at that time?

[fol. 71] A. That if I didn't sign the statement and a waiver for them, they would see that I got 80 years or more time; that if I got any witnesses, they would see that they got 10 years.

Q. That is the language they used?

A. Yes, sir.

Q. Where did you sign this waiver?

A. In the county jail at Kansas City.

Mr. Williams: This waiver you are talking about is just a waiver of extradition?

The Witness: Removal.

Mr. Williams: Technically, it is extradition still.

Mr. Zirpoli: All right.

Mr. Williams: That was signed where?

Mr. Zirpoli: In the county jail.

Q. Now, let me get this straight. How many times did you say your attorney appeared with you?

A. On two occasions.

Q. You appeared before the Commissioner on three occasions?

A. Yes.

Q. Did you have your attorney the first time you appeared?

A. Yes.

Q. And you had one the second?

A. On the third occasion, if I remember right.

Q. Your memory is, you had any attorney on the first and third hearings?

A. Yes, sir.

Q. And you didn't have him on the second, is that right?

A. No, sir.

Q. Then you were accompanied from Kansas City to Fargo by the United States Marshal and the Deputy?

A. Yes.

Q. Do you know the name of the marshal?

A. No, sir.

Q. Do you know the name of the Deputy?

A. No, sir.

Q. Upon your arrival in Fargo, where did they take you?

A. To the Post Office Building, at first.

Q. Getting back to Kansas City, you were in the county [fol. 72] jail there?

A. Yes, sir.

Q. Were you in a ward in which Federal prisoners were kept?

A. Yes.

Q. Did you talk your case over with any prisoners?

A. No.

Q. With no one in the prison?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Were you able to talk to other prisoners in that ward?

A. Yes, sir.

Q. Did you talk to any of the other prisoners about their cases?

A. No, sir.

Q. Do you know whether any prisoners, who were in that ward you were in, had attorneys appointed for them?

A. I do not.

Q. You don't know of any one who did?

A. No, sir.

Q. After you arrived in Fargo, where did they put you?

A. First, in the Post Office Building; then, to the county jail.

Q. Were you in a ward for Federal prisoners there?

A. I was in a ward by myself.

Q. Were you the only prisoner there?

A. In that department, yes.

Q. Did you have an opportunity to talk to other prisoners there?

A. No, sir.

Q. Didn't they let you out to get a little fresh air at any time?

A. They did not.

Q. So you had no contact with other prisoners at Fargo?

A. No, sir; not until after my sentence.

Q. Then, on the day you appeared in court—By the way, had any agents of the Federal Bureau of Investigation been down to see you at the county jail?

A. In Fargo?

Q. Yes.

A. No, sir.

Q. Did you see any agent at any time after you got to Fargo?

A. Yes, sir.

[fol. 73] Q. When?

A. In the court room.

Q. The man that made the statement to the Court at the time you entered your plea of guilty?

A. Yes, sir.

Q. Had you talked to him before that?

A. I had never seen him before.

Q. Had you made a statement of your case to any agent?

A. In Fargo, you mean?

Q. Fargo or Kansas City, or at Excelsior Springs, or en route from any of those places.

A. Will you please put that question again?

Q. Did you ever make a statement to one of the agents or any other officer of the Federal Government at any time, with relation to your case, in which you pleaded guilty?

A. I signed a statement in Kansas City.

Q. And when was that statement signed?

A. The statement was combined with a waiver, and signed at that time.



Q. The statement was combined with a waiver?

A. Yes, sir.

Q. Had you discussed that matter with your attorney?

A. No, sir.

Q. At any time?

A. No, sir.

Q. And that statement was a confession of guilt, was it?

A. The words, as I recall them, was that I was implicated in the robbery.

Q. You said you were implicated in the robbery?

A. Yes.

Q. That is all you said in the statement?

A. Yes.

Q. That is a signed statement, isn't it?

A. Yes.

Q. Is that the only statement you made?

A. Yes.

Q. What did you plead guilty to—what charges?

A. The charges, I understood until I got to North Dakota, were bank robbery.

Q. Was that what you understood you were pleading to [fol. 74] in Court?

A. Yes.

Q. What happened when you got in court? Was there anybody in court? Who was in court when they brought you there?

A. Quite a number of people were there.

Q. Quite a number of people were there?

A. Yes, sir.

Q. The Judge was there?

A. The Judge, yes.

Q. Was the Clerk there?

A. I think so; I don't recall him.

Q. And you said the United States Attorney was there?

A. Yes.

Q. Either the United States Attorney, or his assistant—do you know which it was?

A. No, I am not sure; I believe it was Mr. Lanier.

Q. And the agent from the Federal Bureau of Investigation?

A. Yes.

Q. After they brought you into court, what happened?

A. I was seated until three or four other prisoners were sentenced.

Q. Do you remember the names of any of those prisoners?

A. No, sir.

Q. Three or four were sentenced before you on the same day?

A. Yes, sir.

Q. And you can't tell me the names of any of those men now?

A. No, sir.

Q. Then what happened?

A. My name was called and I stood up; and Judge Miller asked me for a plea.

Q. Didn't they ask you what your name was?

A. Yes.

Q. They asked you what your name was?

A. Yes.

Q. What did they say in that regard? What did they say about your name?

A. I don't recall the exact words.

Q. Did they ask you what your true name was?

A. Yes.

[fol. 75] Q. Did you tell them your name was Forrest Holiday?

A. Yes.

Q. By what name did they call your case?

A. Forrest Holiday, if I remember right.

Q. As you recall, they called your case by Forrest Holiday?

A. Yes.

Q. Then what happened after they called your case and you told them your true name was Forrest Holiday? What happened after that?

A. Judge Miller told me I was charged with robbing a bank at North Dakota, at Maddock.

Q. Judge Miller told you what you were charged with, is that right?

A. Yes, sir.

Q. What did the judge say in that regard?

A. He asked if I was guilty or not guilty.

Mr. Williams: Did he say you were charged with bank robbery?

The Witness: Yes.

Mr. Zirpoli:

- Q. Did he tell you the nature of the charge?  
A. Nothing, except a bank robbery.  
Q. The judge said that, and that is all he said?  
A. As I remember it, yes.  
Q. He didn't say anything more than that?  
A. I couldn't say right now...  
Q. Am I to understand, then, that you don't remember?  
A. I don't remember all the words, no, sir.  
Q. Did the clerk say anything at all?  
A. I never heard the clerk say anything.  
Q. Then what did the judge do? Did he ask you what your plea was?  
A. Yes.  
Q. What did you say?  
A. I replied, "Guilty."  
Q. How many counts did you plead guilty to?  
A. Two.  
Q. Did you know at the time that you were pleading guilty to two counts?  
[fol. 76] A. Not until after the counts were read to me.  
Q. Then the counts were read to you?  
A. Yes.  
Q. Who read the counts to you?  
A. The attorney, or assistant attorney, for the Government.  
Q. He read the counts of the indictment?  
A. Yes.  
Q. And you pleaded guilty to the two counts?  
A. Yes.  
Q. So you knew the nature of the charges against you?  
A. After he read the counts.  
Q. And you pleaded guilty to those counts?  
A. Yes.  
Q. All right. Now, so that when you told Mr. White, when he asked you "Was the indictment read to you?" and you said "No, sir," you were mistaken. You happen to recall about the United States attorney reading the two counts, is that right?  
A. That is right.  
Q. What else did the judge say to you? Did he ask you what your plea was, or did he say "Do you plead guilty or not guilty?"



A. He asked, at first, how I wished to plead.

Q. What was your response?

A. I replied, "Guilty."

Q. Then what did the judge say?

A. The United States Attorney, at that time, got up and read off the count No. 1, if I remember right.

Q. Did the judge ask what the plea was?

A. He asked what the plea was, and I replied "Guilty."

Q. Then he read count 2?

A. And the United States attorney read count 2.

Q. And the judge asked you what your plea was on that?

A. Yes.

Q. And you replied—

A. (Interrupting). I hesitated, and he instructed that any one who was guilty of any part of it, was guilty of all.

Q. What did you say then?

A. I pled guilty.

[fol. 77] Q. Did the judge say anything to you—ask you if you had an attorney?

A. No, sir.

Q. Did the clerk ask you if you had an attorney?

A. No, sir.

Q. No one asked you if you had an attorney?

A. No, sir.

Q. Was anything said at all by the judge or by the clerk about an attorney?

A. No, sir.

Q. The word "attorney" was not mentioned at any time?

A. Not to me.

Q. Did you hear the word "attorney" in connection with any of the other prisoners?

A. No, sir.

Q. How long did this hearing last that you had there?

A. Approximately fifteen minutes.

Q. Did the judge ask you if you had anything to say before he sentenced you?

A. Yes, sir.

Q. Did you have anything to say?

A. I replied, "Nothing."

Q. You engaged counsel in these habeas corpus proceedings, did you not?

A. Yes, sir.

Q. Did you use funds that you had on deposit in the prison for that purpose?

A. No, sir.

Q. At all events, you did not use funds you had on deposit here in the prison?

A. No, sir.

Q. You say you had approximately \$20.00 on your person at the time you were in Kansas City?

A. At the time I was in Fargo.

Q. At the time you were in Fargo you had \$20.00?

A. Yes, sir.

Q. Did you have more than that?

A. No, sir.

Q. Did you talk over your case in Kansas City with relation to the Fargo case?

A. No.

Q. You didn't discuss your guilt or innocence at all with him?

A. No, sir.

[fol. 78] Q. Not at any time?

A. No, sir.

Q. Did you ask him for any advice as to what you should or should not do?

A. No sir; I left that to him.

Q. You did discuss it with him, then, did you?

A. Not about my guilt or innocence, no.

Q. You did not discuss that with him?

A. No, sir.

Q. You didn't discuss the Fargo case at all with him?

A. No, sir.

Q. And you didn't discuss the robbery with him?

A. No, sir.

Q. You paid him a fee?

A. Yes.

Q. How much did you pay him?

A. \$100.00.

Q. Am I to understand you didn't talk to him at all about the offense with which you were charged?

A. The talk was about extradition.

Q. And nothing else?

A. Yes, sir.

Q. Didn't you discuss any other phase of the case?

A. He understood the case, I suppose; he said I had been indicted.

Q. You saw him before you were indicted?

A. Yes, sir.

Q. What did you talk about then?

A. He asked me if I could get any witnesses.

Q. For what?

A. To appear at the extradition hearing.

Q. What kind of witnesses?

A. I don't know what kind he meant.

Q. You didn't know what kind he meant?

A. He didn't state.

Q. Didn't you ask him what kind?

A. I suppose he meant witnesses that I would prove I was not in the bank robbery at any time.

Q. Then you did discuss the bank robbery, didn't you?

A. The discussion was mostly about the extradition hearing.

Mr. Williams: May we have a recess for a few moments?

(At this point a five minute recess was taken.)

[fol. 79] Mr. Zirpoli:

Q. Tell me what you understood when your attorney talked to you about witnesses.

A. I understood him to inquire if I had anybody to witness that I was at a different place than what I was charged with.

Q. Then you did talk to him about the robbery?

A. To that extent, yes.

Q. To what extent did you talk to him about it?

A. Concerning witnesses.

Q. Didn't you talk to him about the offense at all?

A. Only about witnesses.

Q. Didn't you talk to him about yourself and the offense?

A. I told him I wasn't guilty.

Q. You told him you weren't guilty?

A. Yes, sir.

Q. Why did he ask you about witnesses to show you weren't at the scene of the crime? Is that what you mean?

A. Yes.

Q. Then you must have told him you weren't there.

A. I told him I wasn't guilty.

Q. Did you tell him that you weren't guilty?

A. Yes.

Q. You told him you weren't guilty; and you told him you weren't there?

A. Yes.



Q. What else did you tell him about this robbery, or your innocence in connection with it?

A. I told him I was in Minnesota at the time.

Q. I beg your pardon?

A. I told him I was in Minnesota at the time.

Q. Did you give him the names of any witnesses to show you were in Minnesota?

A. No.

Q. Didn't he tell you then he didn't believe you?

A. No, sir.

Q. What else—what other conversation did you have with him about this?

A. The first conversation I had with him was concerning [fol. 80] money.

Q. About the robbery—have you told me everything you discussed with him, in so far as the offense was concerned?

A. As far as I remember.

Q. And when the indictment was returned, he advised you to consent to a removal, waive extradition?

A. He advised me he couldn't do anything for me; that I might as well go to North Dakota.

Q. He advised you that you might as well go to North Dakota?

A. Yes, sir.

Q. Did you have any conversation with him at all as to what you should do in North Dakota?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. Did you have any conversation with him in relation to your guilt or innocence after the indictment was returned?

A. No, sir.

Q. Did you have any conversation with him at that time as to whether or not you were at the scene of the crime?

A. To what time do you refer to?

Q. Under the charge, the indictment was returned, charging you with certain acts, didn't it?

A. Yes.

Q. The attorney discussed those charges with you, didn't he?

A. He came to the county jail and told me he understood I was indicted; and that as long as I had been indicted, I might as well go to North Dakota.

Q. Did he tell you what you were indicted for?

A. No.

Q. He did not?

A. No.

Q. He didn't tell you anything about the indictment or the charges?

A. It was read partly to me that I was charged with bank robbery, in front of the Commissioner.

Q. What was read to you?

[fol. 81] A. I don't know; he read these charges.

Q. Did you persist, even then, to tell him you were in Minnesota?

A. To tell who?

Q. Your attorney. Didn't I understand you to say—

A. (Interrupting:) Yes.

Q. Did you recall you were in Minnesota during all this time?

A. I told him once.

Q. What did you tell him after that?

A. He didn't ask me again.

Q. Am I to understand that, despite your insistence that you were in Minnesota, he told you to go back, that there was nothing he could do for you after the indictment was returned?

A. That is what he told me.

Q. Didn't he tell you that the fact that you weren't at the scene might make a difference as to whether you could be removed?

A. No, sir.

Mr. White: That wouldn't make any difference.

Mr. Zirpoli: It might or might not. I am pretty sure, if you were going to defend a man, and he wasn't there, I don't think he would be removed if Mr. White were representing him.

Q. And that is the extent, then, of your conversation—he just told you to go back?

A. As I remember, it was.

Q. And nothing at all was said as to what you should do after you got there?

A. No, sir.

Q. He gave you no advice of any kind or character in that case?

A. No, sir.

Q. Now, you got back, and you told us what happened in court. Is there anything else you remember now that happened in court that you haven't told us already?

A. In connection with my case?

Q. Yes.

A. No.

[fol. 82] Q. Did anything happen in court in connection with your case, that you think is material here?

A. Two or three fellows were brought up while I was waiting in court, for sentence. They all pleaded guilty, and they were either paroled or sentenced in some manner. A fellow just previously before I was brought up pleaded guilty and when he received a five year sentence he wished to withdraw his plea and the judge refused to consider it.

Q. Then what happened?

A. That is as far as I remember of other cases besides by own.

Q. That happened before you entered your plea, didn't it?

A. Yes.

Q. You said, with relation to your education, that you had a year in high school?

A. Yes, sir.

Q. Is that the extent of your education?

A. My formal education.

Q. Getting back to your informal education, what other education have you had, other than this formal education that you spoke of?

A. I have done considerable of reading on scientific subjects, and fiction.

Q. Tell me what you have read—just the general subject matter.

A. You mean in the fiction line, or science?

Q. Both. Just generally—you don't have to name particular books—You have read scientific books?

A. Yes.

Q. What kind?

A. Books on mechanics, and some on physics; in fact, there are a number of books in my cell on various college courses.

Q. Various what?

A. College courses.

Q. Have you had some of this education before your arrest?



[fol. 83] A. I have read off and on, mechanics books, and so forth.

Q. You have read fiction books?

A. Yes.

Q. What type of books had you read?

A. Nearly all types of fiction books, I suppose.

Q. I mean, did you read any classics?

A. A few.

Q. Some of the few novels?

A. Yes.

Q. Have you read any Shakespeare?

A. Yes, sir.

Q. This was all before your arrest, we are talking about now, before your Fargo incident?

A. Yes, sir.

Q. Now, Mr. White asked you if any members of your family were attorneys, and you answered they were not. How many are there in your family?

A. My father and mother; and I have three sisters; and a brother.

Q. What do your sisters and your brother do?

A. One sister is a bookkeeper here in California, of some sort; and the other two sisters are married—housewives.

Q. And your brother?

A. My brother is a garage worker.

Q. What does your father do?

A. He has been a salesman most of his life.

Q. Mr. White asked you about the number of times you had been in court, and you told us you had been in court in Hudson, Wisconsin.

A. Yes.

Q. And of being in court in Fargo, North Dakota. These were all prior to this arrest. Then, an arrest in Oklahoma. Where was that?

A. A little town named Drumright.

Q. Was that a state offense?

A. I was charged with vagrancy.

Q. What happened in that case?

A. I was taken up in front of a man—I don't know who he was—and asked if I was guilty or not guilty; and I said I didn't understand, what was vagrancy; and he read "No visible means of support, and soliciting alms," and I said "Not Guilty."

[fol. 84] Q. Then what happened?

A. And he said, "ten days, or \$19.95."

Q. That was after you said "Not Guilty"?

A. Yes, sir.

Q. You weren't represented by an attorney?

A. No.

Q. At least, you had enough intelligence to have him read off the charge and tell you what it was; and he explained the charge to you?

A. I told him I didn't understand the vagrancy charge.

Q. How old were you then?

A. 16 years old.

Q. Was that the first time you had ever been arrested?

A. Yes.

Q. How many times have you been arrested since then?

A. I have been picked up several times.

Q. Approximately how many times all told?

A. About six or eight, I imagine.

Q. And of those six or eight times, how many times did you appear in court?

A. On two occasions.

Q. Two other occasions?

A. Two occasions, including all of them.

Q. In other words, other than the Wisconsin and Fargo, North Dakota, you haven't been in court on any other occasions?

A. No.

Q. What was that extradition proceeding in Fargo, North Dakota?

A. I was in extradition on a Wisconsin charge.

Q. On the same charge on which you later appeared in court in Hudson?

A. Yes.

Q. What was the charge?

A. Larceny.

Q. You were represented by an attorney at that time?

A. In Fargo, North Dakota?

Q. Yes.

A. Yes.

Q. And also an attorney in Hudson, Wisconsin?

A. Yes.

[fol. 85] Q. And those attorneys were employed by you?

A. Yes.

Q. We covered all the court appearances that you have made?



A. Yes.

Q. And were you sentenced on that Wisconsin charge?

A. Yes.

Q. And how much of a sentence did you get?

A. One to ten years.

Q. And you served that in the state penitentiary?

A. Six months in the state penitentiary; and three years in the reformatory.

Q. I presume the first time you ever heard about an attorney being appointed for you, was here at Alcatraz?

Mr. White: He wasn't appointed.

Mr. Zirpoli: All right.

Q. I presume that was the first time you ever heard about that?

A. No, sir.

Q. When did you first hear about it?

A. I have seen in the paper a time or two about a Public Defender in murder charges; and in my opinion, that was the only one for appointing without funds.

Q. You heard about Public Defenders—did you ever hear about them before?

A. Before what time?

Q. About other than Public Defendants on other than murder charges?

A. No, sir.

Q. And you have read about this in the newspapers. When did you first learn you could have someone defend you, if you didn't have funds, in charges other than murder?

A. After I read the Johnson versus Zerbert case.

Q. When did you read that?

A. Here in prison.

Q. You didn't know anything about it before that?

A. No.

Q. Can you give me a citation on that?

A. The number of it?

[fol. 86] Q. Yes.

A. It came out in the 53rd or 55th Supreme Court Reporter.

Q. While you were serving time in the reformatory in Wisconsin, did you go to school there?

A. No.

Q. Did you get any schooling at all in the reformatory?

A. No, sir; with the exception of a course in automobile



mechanics, which I took from the Wisconsin University Extension Division.

Q. Which was given by the Extension Division?

A. Yes, sir.

Q. Getting back to Angus Kennedy, who did you say he was?

A. The Deputy Marshal.

Q. He took you by plane?

A. Yes.

Q. How long were you with him altogether?

A. The trip took about nine hours to Seattle from Fargo, North Dakota.

Q. Did you discuss your case with him?

A. No, sir.

Q. You didn't discuss it at all?

A. I couldn't on the airplane; too much noise was made.

Q. How did you get down to the plane?

A. I came to the air field in a machine; and in Seattle I was put in a taxi by the Deputy; and there was a girl they picked up.

Q. How much conversation did you have with Kennedy at any time?

A. The only conversation I remember having with him was immediately after my trial, leaving the court room. He asked me if I didn't know of a second charge until it was read. I told him, "No, the first time I heard of it."

Q. Didn't your attorney tell you, after the indictment was returned, that there were two charges?

A. No, sir.

Q. Am I to understand you had no conversation whatsoever with Angus Kennedy about your case, other than that statement you just gave me about the second charge? [fol. 87] A. I asked him, while we were waiting, in the discussion, to see my papers—my commitment papers—and he showed them to me, and—

Q. What did he say about your papers?

A. Nothing. I handed them back to him.

Q. Did you ask him about your sentence?

A. No.

Q. Did you ask him about how much time you would have to serve?

A. No.

Q. Did you know at that time anything in relation to

each one of your sentences—did you know how much time you would have to serve?

A. I had no idea.

Q. Did you know how much you would have to serve before being eligible for parole?

A. No.

Q. You would say you did not have any conversation with Mr. Kennedy in which you stated you had been promised by the Government agent that in the event you pleaded guilty you would receive a sentence not to exceed 25 years?

A. No.

Q. Did you ever say that to Mr. Kennedy?

A. No, sir.

Q. Did you say that since the sentences you had received were running consecutively, the most you would have to serve would be the 10 year sentence, and a required portion of the 15 year sentence, before you would be eligible for parole?

A. No, sir.

Q. Did you tell Mr. Kennedy that you had no use for an attorney?

A. No, sir.

Q. Did you tell him you would have been satisfied if you had received the sentence promised you?

A. No, sir.

Q. Did you tell him you would not stand trial because you feared certain things might develop that might not be to the best interests of yourself?

A. No, sir.

Q. And did you say to him, "I knew I would get the book thrown at me"?

A. No, sir.

[fol. 88] Q. Getting back to these two agents, to whom you made the statement, what promises did they make to you? What statements did they make to you?

A. They made the statement that if I wouldn't plead guilty, they would see that I got 80 years, or more time.

Q. How did they compute those 80 years.

A. They marked down 25, 25, 10 and 10 and 10 on a piece of paper.

Q. Did they tell you what the charges were?

A. No.

Q. They did not?

A. No, sir.

Q. They just marked down on a piece of paper those numbers?

A. Yes.

Q. Which of the agents marked it down on a piece of paper?

A. The agent who told me that he was from Aberdeen, South Dakota.

Q. He was the one who marked it down?

A. Yes.

Q. Where was the other agent while he was marking it down?

A. Sitting at the table.

Q. He listened to this conversation?

A. Yes.

Q. What did you say when they said all this to you?

A. I don't remember exactly what I did say, or if I said nothing.

Q. Had you already told them you were guilty?

A. No, sir.

Q. You hadn't confessed that yet?

A. No.

Q. Had you signed a waiver?

A. No.

Q. Had you already been told by your attorney that you should do so?

A. I was told by my attorney that he couldn't do anything for me—that I might as well go.

Q. Do I understand that all the agent did was put down these numbers and not say anything in connection with them?

[fol. 89] A. He told me that was the amount of time I would get if I didn't sign a statement.

Q. For what charges?

A. He didn't mention the charges.

Q. Of any kind or character?

A. No, sir.

Q. What did you have to say to all that, that he would see to it that you would get 80 years?

A. I don't remember.

Q. Did you think you would get 80 years?

A. I don't know.

Q. Did you have in mind anything that would cover the sentences listed there?



A. He explained that all these 10 years were to be for the various state lines that I crossed.

Q. He did tell you something, then. He said because of the various state lines that you crossed, you would get a ten year sentence. What else did he say about that?

A. He said that if I would sign a waiver and a statement he would recommend that I would get only ten years.

Q. What did you say?

A. I don't remember exactly; but to the best of my knowledge, I told him if I signed a statement, I wouldn't know anything about anybody, and I wouldn't sign a statement which would involve anybody else.

Q. Then you did confess your own guilt?

A. I signed a statement.

Q. Did you just sign a statement? What was your purpose in signing the statement?

A. I was given the choice between either signing the statement, or receiving all this time.

Q. You knew you wouldn't receive the time unless they proved the case against you, didn't you? You knew that.

A. I imagine they would have to put some charges against me to get this time.

Q. And you knew they had to prove it?

[fol. 90] A. I didn't know what charges they could put against me; I didn't know how much time I could get.

Q. You were a man of intelligence. You knew exactly what they had to do in order to send you to the penitentiary?

A. I knew from previous experience that I would have to be convicted before I was sentenced.

Mr. Zirpoli: That is all.

Mr. Williams:

Q. How old are you now, Mr. Holiday?

A. 36; nearly 37.

Q. Do you recall what the first count was?

A. I was charged in the words of the statute, "Taking by force, fear and violence—a certain sum of money."

Q. Do you recall what the second count was?

A. The second count, as I recall it from the indictment, was that in committing the first offense, I put in jeopardy the lives of the bank officials.

Mr. Zirpoli:

Q. Those were the counts read to you?

A. Yes.

Mr. White:

Q. You signed the statement before the Government agents at Kansas City, on the representations that they would use their best efforts in obtaining for you a sentence of not more than 10 years, is that correct?

A. Yes, sir.

Q. And in signing that statement and the waiver, the agent also threatened you with imprisonment to the extent of 80 years, unless you did sign the waiver and the statement of your implication in the crime for which you were taken to Fargo, North Dakota?

A. Yes, sir.

Mr. Zirpoli:

Q. They secured a confession from you, is that it?

A. Yes, sir.

Q. But they didn't discuss your plea with you, did they? They didn't discuss your plea, whether you should plead guilty or not guilty; they didn't discuss that at all?

[fol. 91] A. The discussion was about the statement I should sign for them.

Mr. White:

Q. At the proceedings in Fargo, North Dakota, there was an agent there to make a recommendation to the Court for leniency in your behalf, was there?

A. No, sir; the agent there told the Court that I was sentenced to two institutions previously.

Q. In other words, the agent gave the Court a statement of your prior arrests, convictions and terms of imprisonment; but made no statement on your behalf to the Court, recommending leniency?

A. No, sir.

Q. And you are definite and positive that the judge, who presided in court at Fargo, North Dakota, Judge Miller, did not advise you of your right to have counsel, providing you did not have funds with which to secure counsel for yourself.

A. He did not.



Mr. Zirpoli:

Q. When you say the agent told the Court about the two institutions, you referred to the sentences you received for vagrancy, and the Wisconsin sentence?

A. To the Wisconsin sentence alone.

Q. And he mentioned the two institutions in which you served time in Wisconsin?

A. Yes.

Mr. Zirpoli: That is all.

Mr. White:

Q. Have you anything else to say, Mr. Holiday?

A. I don't think so.

Mr. Williams: Do you want it to go to a date?

Mr. Zirpoli: Yes.

Mr. Williams: To what date?

Mr. Zirpoli: I would suggest, if there are stipulations that will take the place of a deposition, that would be all right.

Mr. White: I think the findings should be drawn, on the basis of evidence of record.

[fol. 92] Mr. Zirpoli: February 15. I may want to put in some testimony here. I want the testimony of the agent. I will admit I have the testimony of Mr. Kennedy.

Mr. White: That is too much time.

Mr. Williams: Perhaps we had better make it January 15.

Mr. Zirpoli: You can make it January 15, and I will try and get it in; but I won't promise. I have to locate the agents and get their depositions.

Mr. Williams: All right. January 15, 1940.



[fol. 93] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Present: The Honorable Martin I. Welsh, District Judge

No. 22940

FORREST HOLIDAY

VS.

JAMES A. JOHNSTON, Warden, U. S. Penitentiary, Alcatraz, California

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS—  
July 1, 1940

The report of the United States Commissioner came on regularly this day to be heard.. Thos. C. Lynch, Esq., Assistant United States Attorney, was present on behalf of Respondent. No appearance was made for or on behalf of the Petitioner. After hearing Mr. Lynch, It Is Ordered that said Report of the Commissioner be and the same is hereby approved, that the application for a Writ of Habeas Corpus be and the same is hereby denied, and that said Writ be and the same is hereby discharged.

[fol. 94] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

[Title omitted]

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS—Filed  
August 1, 1940

To the Honorable Martin I. Welsh:

Now comes the petitioner, Forrest Holiday, and moves the Court for leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the Court in the above cause denying a writ of habeas corpus and dismissing the petition therefor.

This appeal will be prosecuted upon the following assignments of error:

(a) The Court erred in not issuing a writ of habeas corpus.

(b) The Court erred in holding that the petitioner competently and intelligently waived his Constitutional right to the assistance of counsel.

(c) The Court erred in holding that it could hear evidence of facts that were sworn to have occurred after sentence of petitioner.

(d) The Court erred in holding that, where two sentences for different amounts, to-wit: ten years on one count and fifteen years on the other count of the indictment to run consecutively, both sentences are not void on their face because of their violation of the jeopardy clause of the Fifth Amendment.

(e) The Court erred in holding that any admissible evidence whatever was adduced against petitioner.

Petitioner is a citizen of the United States and cannot, because of his poverty, prepay the costs of this appeal or guarantee security therefor, and he sincerely believes he is entitled to the relief sought.

Brief and memorandums having been filed before the Court in the above cause, and the Court having written no opinion to overcome the authorities cited, it is unnecessary to further argue the cause here to establish good faith on appeal.

"There can be no doubt that the action of the District Court, as set forth in its order and judgment *refusing to* [fol. 95] *issue the writ*, was, *so far as an appeal was concerned*, equivalent to a refusal to discharge the prisoner on a hearing on a return to the writ; and that, under section 1019 of the Revised Statutes, an appeal lies to this Court from that order and judgment." (Italics added.)

In re Snow, 120 U. S. 274.

Wherefore petitioner prays leave to appeal in forma pauperis under the provisions of Title 28 U. S. C. Section 832.

Forrest Holiday, Petitioner.

STATE OF CALIFORNIA,  
County of San Francisco, ss:

Sworn and subscribed to before me this 30 day of July, 1940.

E. J. Miller, Associate Warden; United States Penitentiary, Alcatraz, California.

Records at U. S. Penitentiary, Alcatraz, California; Indicate that Forrest Holiday is a citizen of the United States.

Forrest Holiday, Register Number 422-AZ has on deposit in the Prisoners' Trust Fund, the sum of \$18.85.

Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths.

[File endorsement omitted.]

[fol. 96] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

ORDER DENYING APPEAL IN FORMA PAUPERIS—Filed August 12, 1940

In his application for a writ of habeas corpus, petitioner makes two contentions. First, that at the time he pleaded guilty to the indictment returned against him in the South-eastern Division of the District of North Dakota, he was deprived of his constitutional right to the assistance of counsel for his defense. Second, that the two counts of the indictment stated the same offense and that his conviction and sentence on both counts constituted double jeopardy.

As to the second contention, it appears that his sentence of ten years under the first count has not expired. The rendition of this sentence for the offense charged in said count was within the jurisdiction and power of the court imposing it, and this application for a writ of habeas corpus based on any alleged invalidity of the sentence imposed under the second count is premature and cannot be considered. *McNally v. Hill*, 293 U. S. 131; 55 Sup. Ct. 24.

[fol. 97] As to petitioner's other contention, that he was deprived by the sentencing court of his constitutional right to the assistance of counsel for his defense. A writ of habeas corpus was issued herein, returnable before Ernest E. Williams, United States Commissioner. A full hearing



was held at Alcatraz Penitentiary, and the report, findings and recommendation of the Commissioner are on file herein. After an examination of the transcript of the proceedings had at this hearing, the testimony of the petitioner, the evidence presented by the respondent and the record filed as a part of the return, this court determined that petitioner had failed to sustain the burden imposed on him of proving that he was deprived of his constitutional right to the assistance of counsel for his defense and that the evidence amply supported the finding of the Commissioner that the petitioner competently and intelligently waived his right to the assistance of counsel; and adopting and approving the report, findings and recommendation of said United States Commissioner, the writ was discharged.

For the reasons hereinabove set forth,

It Is Hereby Certified, that in the opinion of the undersigned, there is no merit in the application for appeal now before the court, and said appeal in forma pauperis is therefore Denied.

Dated: August 12, 1940.

Martin I. Welsh, United States District Judge.

[File endorsement omitted.]

[fols. 97-A-100] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 101] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. —

FORREST HOLIDAY, Petitioner

vs.

MARTIN I. WELCH, Judge of the United States District  
Court for the Northern District of California, Southern  
Division, Respondent

MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS IN  
FORMA PAUPERIS—June 20, 1940

To the United States Circuit Court of Appeals for the  
Ninth Circuit:

Now comes the petitioner, Forrest Holiday, and applies  
for leave to file a petition for a writ of Mandamus sub-

mitted herewith in forma pauperis under the provisions of 28 U. S. C. section 832.

Petitioner therefore alleges on his oath:

That because of his poverty, he cannot prepay the costs of filing or other fees in the above action; that he sincerely believes he is entitled to the relief sought; and that he is a citizen of the United States.

Forrest Holiday, Petitioner, Alcatraz, Calif.

Records at U. S. Penitentiary, Alcatraz, California, indicate that Forrest Holiday is a citizen of the United States.

Forrest Holiday, Register Number 422AZ has on deposit in the Prisoners' Trust Fund, the sum of \$22.59.

Sworn to and subscribed on this 18 day of June, 1940,  
E. J. Miller, Associate Warden, U. S. Penitentiary,  
Alcatraz, Calif. Warden-Associate Warden au-  
thorized by the Act of February 11, 1938, to ad-  
minister oaths. (Seal.)

[fol. 102] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE NINTH CIRCUIT

[Title omitted]

#### PETITION FOR WRIT OF MANDAMUS

To the United States Circuit Court of Appeals for the Ninth  
Circuit:

Application is here made, by the petitioner Forrest Holiday, for a writ of Mandamus addressed to the Honorable Martin I. Welch, Judge of the United States District Court for the Northern District of California, Southern Division, commanding him to perform his official duty under the Statutes and the law of the United States, made and provided in such case, and thereby proceed without further delay and bring to a conclusion petitioner's habeas corpus action in the above named District Court, No. 22940-W.

#### Jurisdictional Statement

This Court has jurisdiction to issue a writ of Mandamus in aid of its Appellate jurisdiction. 28 U. S. C. section 377.

### Statement of Facts

A brief summary of the facts on record are as follows:

Petition was sworn to and signed before a Notary Public (Associate Warden) on February 4th, 1939, by petitioner. Due to institutional regulations, filing fee for petition was not sent or received by the Clerk of the District Court until March 3rd, 1939, on which date petition was filed and assigned the number—22940-L.

Petitioner, by letter, requested time for counsel to prepare a brief. Judge Louderback granted a delay for this purpose also an additional delay requested by Stephen M. White, counsel employed for petitioner during the first stay in the proceedings, was granted by Judge Louderback. [fol. 103] Thereafter, Judge Louderback issued an order to show cause and set the date of July 10th, 1939, for a return and hearing on said order to show cause.

On July 10th, 1939, Judge St. Sure, setting for and in behalf of Judge Louderback, granted a stay of two weeks to allow counsel for petitioner time to prepare and file an answer to the return made by the respondent. Judge St. Sure subsequently caused the case to be transferred to Judge Martin I. Welch.

At Judge Welch's direction, additional Memoranda was filed by petitioner's counsel on August 10th, 1939.

On or about December 9th, 1939, Judge Welch granted the above named petition No. 22940-W, the same being returnable at Alcatraz, California, on December 16th, 1939. This date being tentative, was changed to December 19th, 1939.

At the hearing on December 19th, 1939, before Commissioner Williams, petitioner did testify, as required by law, and at its conclusion the date of January 15th, 1940 was agreed upon as ample time for the filing of additional evidence on behalf of the respondent. For reasons, at this time unknown to petitioner, this additional evidence was not submitted to Commissioner Williams until April 30th, 1940.

As petitioner is advised and believes, no further move has been made by Judge Welch or Commissioner Williams to bring to a conclusion this action pending for many months in the District Court.



## Points and Authorities

As this petitioner is advised and believes, the following are applicable to Mandamus.

## I

Where the District Court Judge refuses to act in an action in his Court when the moving party has a present right to such action, Mandamus lies on the ground that such refusal to act obstructs and interferes with appellate power.

Frankel v. Woodrough, (C. C. A. 8) 7 F. (2nd) 796.

McNinch v. Heitmeyer, (D. C. App.) 105 F. (2nd) 41, 43.

Marbury v. Madison, 1 Cr. 137, 175.

## II

"It is elementary law that Mandamus will only lie to enforce a ministerial duty, as contra-distinguished from a duty which is merely discretionary"

United States ex. rel. International Contracting Co. v. Lamont, 155 U. S. 303, 308.

[fol. 104]

## Prayer

Wherefore, good cause appearing, petitioner prays that an order to show cause why a writ of Mandamus should not issue be directed to the aforesaid Judge Welch as to all the matters of this petition, and prays that a writ of Mandamus issue to said Judge Welch commanding him to proceed without further delay to make a final order in said habeas corpus action No. 22940-W. after finding the facts from the evidence and stating the conclusions of law.

Forrest Holiday, Petitioner, Alcatraz, Calif.

S-or-n to and subscribed on this 18 day of June, 1940.

E. J. Miller, Associate Warden, U. S. Penitentiary, Alcatraz, Calif. Warden-Associate Warden authorized by the Act of February 11, 1938, to administer oaths. (Seal.)

[fol. 105] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE NINTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR LEAVE TO FILE PETITION FOR  
WRIT OF MANDAMUS—Filed July 16, 1940

Upon consideration of the motion of the petitioner for leave to file petition for writ of mandamus directed to the above named respondent, and it appearing to the Court that the petition for writ of habeas corpus referred to therein was denied by the trial court on July 1, 1940, It Is Ordered that said petition for leave to file petition for writ of mandamus be, and hereby is, denied.

Curtis D. Wilbur, Francis A. Garrecht, William Healy, United States Circuit Judges.

Dated: San Francisco, California. July 16, 1940.

[File endorsement omitted.]

[fol. 106] IN UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Title omitted]

PETITION FOR LEAVE TO APPEAL IN FORMA PAUPERIS AFTER  
DENIAL OF SUCH LEAVE IN THE DISTRICT COURT—August  
27, 1940

Forrest Holiday, Register Number 422-AZ has on deposit in the Prisoners' Trust Fund, the sum of \$16.32.

To the United States Circuit Court of Appeals for the Ninth Circuit:

Application is here made by the petitioner, Forrest Holiday, for leave to appeal in forma pauperis in the above cause after the Honorable Martin I. Welch, on the twelvth day of August, 1940, denied such leave to Appeal. The decision denying leave to appeal is set forth in the appendix annexed hereto. Said appeal was applied for on the following errors:

### Assignment of Errors

(a) The Court erred in not issuing a writ of habeas corpus.

(b) The Court erred in holding that the petitioner completely and intelligently waived his constitutional right to the assistance of counsel.

(c) The Court erred in holding that it could hear evidence of facts that were sworn to have occurred after sentence of petitioner.

(d) The Court erred in holding that, where two sentences for different amounts, to-wit, ten years on one count and [fol. 107] fifteen years on the other count of the indictment to run consecutively, both sentences are not void on their face because of their violation of the jeopardy clause of the Fifth Amendment.

(e) The Court erred in holding that any admissible evidence whatever was adduced against petitioner.

### Cause for Appeal

Said decision of the Honorable Martin I. Welch, which is quoted in the appendix, denied the appeal on the implied ground that the decision of the District Court is final. The District Court did not say that the appeal was sought without good faith, but that, "in the opinion of the undersigned, there is no merit in the application for the appeal," so holding arbitrarily in violation of the due process of law clause of the Fifth Amendment to the Constitution.

Petitioner has given no notice of Appeal.

Brief, Memorandum and evidence were before the District Court, and a motion in diminution of the records is filed herewith, so that this Court may have the entire proceeding before it for consideration.

Petitioner is a citizen of the United States and cannot, because of his poverty, prepay the costs of this appeal or guarantee security therefor, and he sincerely believes he is entitled to the relief sought.

Wherefore, good cause appearing therefor, petitioner prays leave to appeal in forma pauperis under the provisions of 28 U. S. C., section 832.

Forrest Holiday, Petitioner.

Records at U. S. Penitentiary, Alcatraz, California, indicate that Forrest Holiday is a citizen of the United States.



STATE OF CALIFORNIA,  
County of San Francisco:

Subscribed and sworn to before me this 24 day of  
August, 1940. E. J. Miller, Associate Warden,  
United States Penitentiary, Alcatraz, California.  
(Seal.)

Warden-Associate Warden authorized by the Act of Feb-  
ruary 11, 1938, to administer oaths.

[fol. 108] IN UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Title omitted]

MOTION IN DIMINUTION OF RECORDS

To the United States Circuit Court of Appeals for the  
Ninth Circuit:

Now comes the petitioner, Forrest Holiday, and gives  
five days notice to James A. Johnston, Warden, U. S. Peni-  
tentiary, Alcatraz, California, and to Frank J. Hennessy,  
United States Attorney, that at ten o'clock A. M., on the  
3rd day of September, 1940, petitioner will appear in the  
above court in its Courtroom in the Postoffice and Courts  
Building, Seventh and Mission Streets, San Francisco, Cali-  
fornia, and then and there move the Court to issue a writ  
of Certiorari in diminution of the record in the above cause  
in the District Court, so that, in connection with the appli-  
cation for leave to appeal filed herewith, the Court may  
consider the record in the Court below.

Forrest Holiday, Petitioner.

STATE OF CALIFORNIA,  
County of San Francisco, ss:

Subscribed and sworn to before me this 24 day of  
August, 1940. E. J. Miller, Associate Warden,  
United States Penitentiary, Alcatraz, California.  
(Seal.)

Warden-Associate Warden authorized by the Act of Feb-  
ruary 11, 1938, to administer oaths.

[fols. 109-110] Appendix omitted. Printed side page, 96  
ante.

[fol. 111] IN UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

In the Matter of the Application of FORREST HOLLIDAY for  
leave to appeal in forma pauperis.

Before Wilbur, Mathews and Healy, Circuit Judges.

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL IN FORMA  
PAUPERIS—Filed September 5, 1940

Application for leave to appeal in forma pauperis is  
denied.

Curtis D. Wilbur, Clifton Mathews, William Healy,  
United States Circuit Judges.

[File endorsement omitted.]

[fol. 112] Clerk's certificate to foregoing transcript  
omitted in printing.

[fol. 113] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 3, 1941

The Petition herein for a writ of certiorari to the United  
States Circuit Court of Appeals for the Ninth Circuit is  
granted.

And it is further ordered that the duly certified copy of  
the transcript of the proceedings below which accompanied  
the petition shall be treated as though filed in response to  
such writ.

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